



<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-20210764WT000000B042

फा.सं./F.No. STC/15-17/OA/2020

आदेश की तारीख/Date of Order :- 30.07.2021

जारी करने की तारीख/Date of Issue :- 30.07.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 18/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 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 -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -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 जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

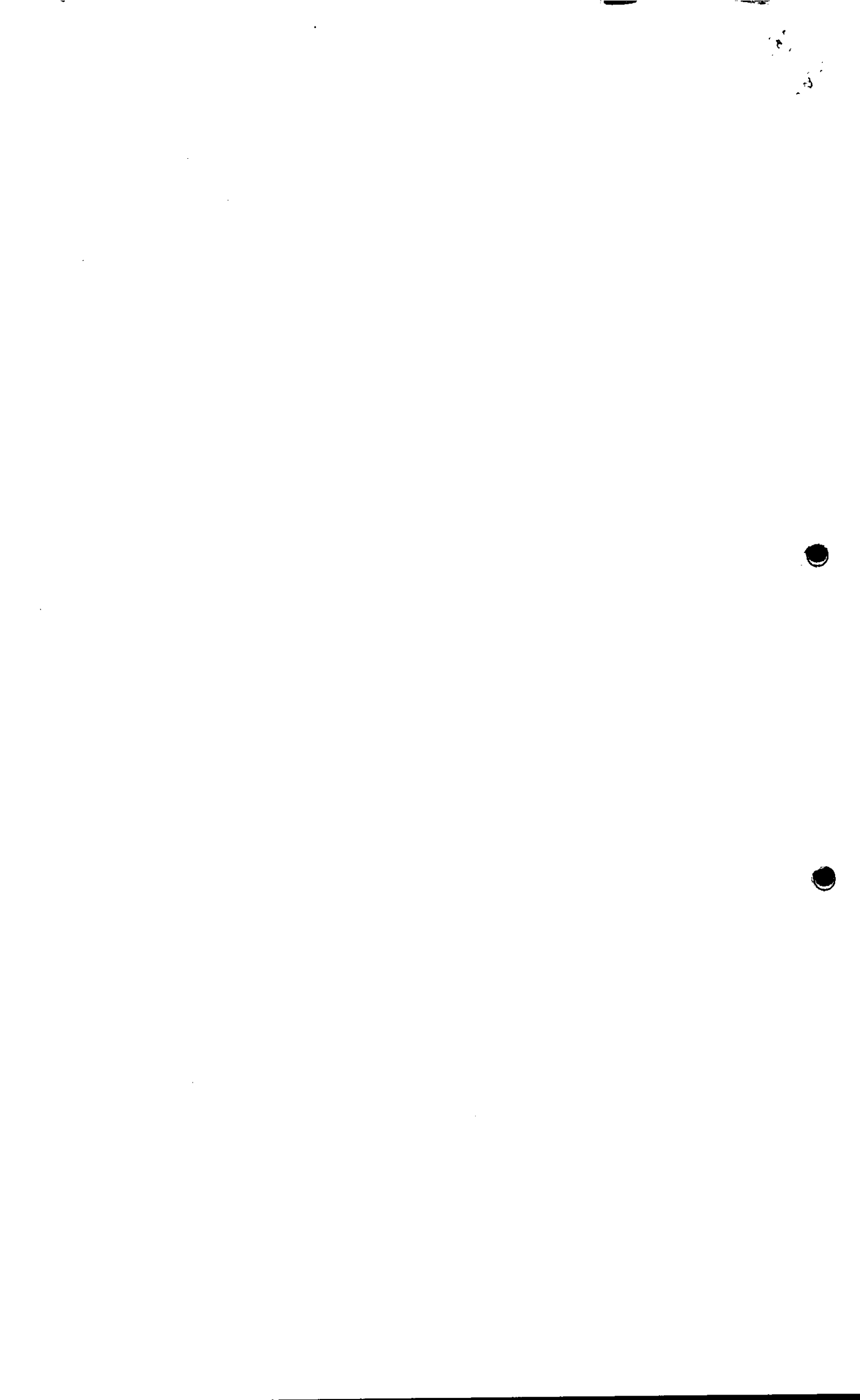
The appeal should be filed in form एस टी -4 (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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 No. F.No.VI/1(B)/Tech-5/SCN/Tirupati/2020-21 dated 25.05.2020 issued to M/s Tirupati Sarjan Limited, 103, Satyamev Complex, Opposite Gujarat High Court, Sarkhej-Gandhinagar Highway, Sola, Ahmedabad 380 060.



BRIEF FACTS OF THE CASE:

M/s Tirupati Sarjan Limited (hereinafter referred as " the said assessee" for the sake of brevity) is a Limited company, having its registered office at 103, Satyamev Complex, Opposite Gujarat High Court, Sarkhej-Gandhinagar Highway, Sola, Ahmedabad 380 060 were engaged in rendering services i.e Works contract service and Construction of Residential Complex Services. They had a Service Tax registration numbered AA ACT7015MSD002.

2 During the course of audit for the period from October 2014 to June 2017, the officers of Audit Commissionerate Ahmedabd had noticed the following discrepancies from the records of the said assessee.

2.1 Cenvat credit taken and utilised during October-2014 to June-2017 without documents and on ineligible documents/invoices

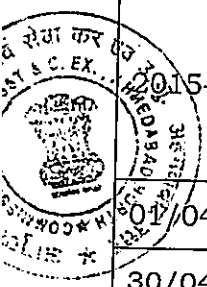
2.1.1 It was seen that the assessee had availed and utilised cenvat credit which were not eligible for various reasons as tabulated below.

F/Y 2014-15 (Oct-March):

Date	Name of the Service Provider of the assessee	Credit Amount	Remarks
2014-15	Credit Taken during the months of Nov-2014, January-2015 and March-2015 as per ST-3 return	71508	No supporting documents related to the said amount (as mentioned in service tax returns) are provided
01/12/2014	SGS India Pvt Ltd	550	Credit availed after one year from the date of invoice i.e. 13-09-2013.
01/01/2015	Poojaben Prakashkumar Mehta	505043	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available. Invoice/Bill could not be furnished by the assessee.
01/01/2015	Pankaj Construction	13905	
21/03/2015	Julie Khatoon Mohammad Shamshad Alam	61805	
	TOTAL 2014-15	652811	

2015-16:

2015-16	Credit of SB Cess taken on different invoices during 2015-16	2080	Credit of SBC is not available in terms of CCR,2004
2015-16	Difference of credit as per ST-3 and Credit Register (Oct-2015)	11092	Credit Taken: 339992 Credit as per Cenvat Register: 328900 Diff.:11092 No documentary evidence is available justifying the difference.
01/04/2015	Jay Ramdev Welding Works	7684	Invoice/Bill could not be furnished by the assessee.
30/04/2015	Deep Security Force	459	Invoice/Bill could not be furnished by the assessee.



18/05/2015	Rajesh J.Shah& Associates	618	Invoice/Bill could not be furnished by the assessee.
31/05/2015	Julie Khatoon Mohammad Shamshad Alam	724456	Invoice/Bill could not be furnished by the assessee.
30/06/2015	Julie Khatoon Mohammad Shamshad Alam	95150	Invoice/Bill could not be furnished by the assessee.
01/07/2015	Poojaben Prakashkumar Mehta	107775	Invoice/Bill could not be furnished by the assessee.
01/07/2015	Poojaben Prakashkumar Mehta	114180	Invoice/Bill could not be furnished by the assessee.
01/07/2015	Poojaben Prakashkumar Mehta	399009	Invoice/Bill could not be furnished by the assessee.
1/8/2015	Surti Pest Control Service	4920	Invoice/Bill could not be furnished by the assessee.
17/08/2015	Anand Environmental Consultants (P) Ltd	7000	Invoice/Bill could not be furnished by the assessee.
1/10/2015	Helix Security & Consultancy Services	1932	Invoice/Bill could not be furnished by the assessee.
20/10/2015	Helix Security & Consultancy Services	4877	Invoice/Bill could not be furnished by the assessee.
31/10/2015	Rajput Security & Investigation Services	4200	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
1/12/2015	Rajput Security & Investigation Services	7980	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoices).
31/12/2015	Rajput Security & Investigation Services	7770	Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
1/1/2016	Voice Etc	933	Invoice/Bill could not be furnished by the assessee.
25/01/2016	Vistas Engineers Pvt. Ltd.	31097	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoices)
31/01/2016	Rajput Security & Investigation Services	9030	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoices). Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
1/2/2016	Julie Khatoon Mohammad Shamshad Alam	329311	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Name address etc of Service recipient is not mentioned. Provider has charged service tax @12.36% however, assessee has taken credit @14.5% of the invoice value)

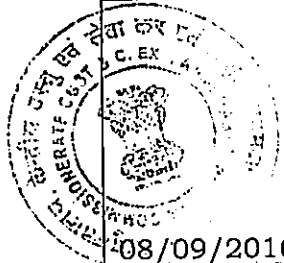


1/2/2016	PoojabenPrakashkumar Mehta	329311	Invoice/Bill could not be furnished by the assessee.
1/2/2016	E - Procurement Technologies Limited	1167	Invoice/Bill could not be furnished by the assessee.
22/2/2016	Pankaj Construction	329312	Invoice/Bill could not be furnished by the assessee.
1/3/2016	Rajput Security & Investigation Services	8106	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
15/03/2016	Dhanvantri Landscaping & Gardening Services	8525	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoices)
18/03/2016	New S. K. Roof Care	1015	Invoice/Bill could not be furnished by the assessee.
31/03/2016	TPS Thakur Perfect Service	4472	Invoice/Bill could not be furnished by the assessee.
	TOTAL 2015-16	2553461	

2016-17:

2016-17	Credit of SB Cess taken on different invoices during 2016-17	4400	Credit of SBC is not available in terms of CCR,2004
2016-17	Difference of credit as per st-3 and Credit register (April-2016)	4365	Credit Taken:1397119 Credit as per Cenvat Register: 1392754 Diff.:4365 No documentary evidence is available justifying the difference.
05/04/2016	Rain make	175	Invoice/Bill could not be furnished by the assessee.
30/04/2016	TPS Thakur Perfect Service	4655	Invoice/Bill could not be furnished by the assessee.
30/04/2016	Rajput Security & Investigation Services	8820	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
31/05/2016	TPS Thakur Perfect Service	4778	Invoice/Bill could not be furnished by the assessee.
31/05/2016	Rajput Security & Investigation Services	7602	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
31/05/2016	TPS Thakur Perfect Service	1276	Invoice/Bill could not be furnished by the assessee.
01/07/2016	TPS Thakur Perfect Service	4760	Invoice/Bill could not be furnished by the assessee.
01/07/2016	Rajput Security & Investigation Services	5950	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
01/07/2016	Spartan Engg Ind Pvt Ltd	980	Invoice/Bill could not be furnished by the assessee.

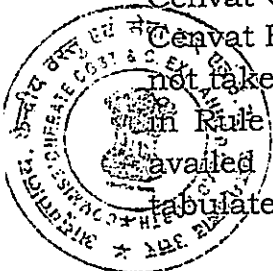
01/07/2016	Abhivyakti Communication	152	Invoice/Bill could not be furnished by the assessee.
01/07/2016	Rajput Security & Investigation Services	9092	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
02/07/2016	TPS Thakur Perfect Service	1074	Invoice/Bill could not be furnished by the assessee.
22/07/2016	PoojabenPrakashkumar Mehta	2460	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Name address etc of the service recipient and Service Tax Reg no. And address of the service provider was not mentioned on the invoices)
22/07/2016	PoojabenPrakashkumar Mehta	525	
22/07/2016	PoojabenPrakashkumar Mehta	3825	
22/07/2016	PoojabenPrakashkumar Mehta	1275	
22/07/2016	PoojabenPrakashkumar Mehta	4620	
22/07/2016	PoojabenPrakashkumar Mehta	1950	
22/07/2016	PoojabenPrakashkumar Mehta	2962	
22/07/2016	PoojabenPrakashkumar Mehta	2295	
22/07/2016	PoojabenPrakashkumar Mehta	5010	
22/07/2016	PoojabenPrakashkumar Mehta	1912	
22/07/2016	PoojabenPrakashkumar Mehta	4042	
22/07/2016	PoojabenPrakashkumar Mehta	71888	
22/07/2016	PoojabenPrakashkumar Mehta	10672	
22/07/2016	PoojabenPrakashkumar Mehta	138083	
31/07/2016	Rajput Security & Investigation Services	5810	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
31/07/2016	TPS Thakur Perfect Service	1193	Invoice/Bill could not be furnished by the assessee.
10/08/2016	Vision HVAC Pvt Ltd	518	Invoice/Bill could not be furnished by the assessee.
31/08/2016	Rajput Security & Investigation Services	6510	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
31/08/2016	TPS Thakur Perfect Service	4900	Invoice/Bill could not be furnished by the assessee.
31/08/2016	TPS Thakur Perfect Service	1153	Invoice/Bill could not be furnished by the assessee.
08/09/2016	Shri Sai Contractor	34950	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Name address etc of the service recipient and Service Tax Reg no. And address of the service provider was not mentioned on the invoice)



27/09/2016	Mahavir Glass Enterprise	384	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoice)
30/09/2016	Julie Khatoon Mohammad Shamshad Alam	410960	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Name address etc of the service recipient and Service Tax Reg no. of the service provider was not mentioned on the invoice)
30/09/2016	PoojabenPrakashkumar Mehta	391728	Invoice/Bill could not be furnished by the assessee.
30/09/2016	Astha Security & Labour Supplier	6750	Invoice/Bill could not be furnished by the assessee.
01/10/2016	Mahavir Glass Enterprise	285	Invoice/Bill could not be furnished by the assessee.
01/10/2016	Pankaj Construction	362951	Invoice/Bill could not be furnished by the assessee.
01/10/2016	K G Flooring	553343	Invoice/Bill could not be furnished by the assessee.
03/10/2016	TPS Thakur Perfect Service	742	Invoice/Bill could not be furnished by the assessee.
12/10/2016	K G Flooring	18709	Invoice/Bill could not be furnished by the assessee.
12/10/2016	K G Flooring	47490	Invoice/Bill could not be furnished by the assessee.
12/10/2016	K G Flooring	46771	Invoice/Bill could not be furnished by the assessee.
14/10/2016	K G Flooring	2465	Invoice/Bill could not be furnished by the assessee.
16/10/2016	Mahavir Glass Enterprise	280	Invoice/Bill could not be furnished by the assessee.
17/10/2016	Sahajanand Colour Anodise (AAIHA 4900 M)	35467	Invoice/Bill could not be furnished by the assessee.
17/10/2016	Sahajanand Colour Anodise (AAIHA 4900 M)	30471	Invoice/Bill could not be furnished by the assessee.
27/10/2016	Mahavir Glass Enterprise	444	Invoice/Bill could not be furnished by the assessee.
31/10/2016	TPS Thakur Perfect Service	5800	Invoice/Bill could not be furnished by the assessee.
01/11/2016	Astha Security & Labour Supplier	8437	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoice)
08/11/2016	Jay Ramdev Welding Works	52081	Invoice/Bill could not be furnished by the assessee.
09/12/2016	Mahavir Glass Enterprise	127.5	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoice)
31/12/2016	Nilesh Enterprise - ADVT	357.5	Invoice/Bill could not be furnished by the assessee.
31/12/2016	TPS Thakur Perfect Service	5800	Invoice/Bill could not be furnished by the assessee.
31/01/2017	TPS Thakur Perfect Service	5800	Invoice/Bill could not be furnished by the assessee.
02/03/2017	Jay Ramdev Welding Works	31880	Invoice/Bill could not be furnished by the assessee.
31/03/2017	Julie Khatoon Mohammad Shamshad Alam	133949	Invoice/Bill could not be furnished by the assessee.

31/03/2017	TPS Thakur Perfect Service	7685	Invoice/Bill could not be furnished by the assessee.
	TOTAL 2016-17	2525789	
2017-18 (Apr-Jun):			
2017-18	Credit of SB Cess taken on different invoices during 2017-18 (Apr-June).	87	Credit of SBC is not available in terms of CCR,2004
2017-18	difference of credit as per ST-3 and Credit register (April-2017)	352564	Credit Taken:486167 Credit as per Cenvat Register:133603 Diff.:352564 No documentary evidence is available justifying the difference.
2017-18	difference of credit as per ST-3 and Credit register (June-2017)	8826	Credit Taken:186443 Credit as per Cenvat Register:177617 Diff.:8826 No documentary evidence is available justifying the difference.
2017-18	other credit taken in June-2017	76412	No documentary evidence is available
19/04/2017	adishwar advertising	522	Invoice/Bill could not be furnished by the assessee.
20/04/2017	Ashish teli	58000	Invoice/Bill could not be furnished by the assessee.
30/04/2017	Rajput Security & Investigation Services	8700	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
31/05/2017	Rajput Security & Investigation Services	8108	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
28/06/2017	Supersil Architectural Products Pvt Ltd	34257	Credit taken after one year from the date of invoice i.e. 04.09.2015.
30/06/2017	Rajput Security & Investigation Services	8021	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.
	TOTAL 2017-18 Q1	555497	
GRAND TOTAL		62,87,558/-	

2.1.2 The said assessee did not produce the documents under the provisions of Rule 9(1) of the Cenvat Rules in many of the cases, as tabulated above for availing cenvat credit. They also availed cenvat credit on documents which were not proper as per the provisions of Rules 9(1) and 9(2) of the Cenvat Credit Rules, as tabulated above. The third proviso to Rule 4(1) of the Cenvat Rules says that the manufacturer or the provider of output service shall not take cenvat credit after one year of the date of issue of documents specified in Rule 9(1) of the Cenvat Credit Rules. It was seen that the assessee had availed the cenvat credit of invoices which were more than 1 year old as tabulated above. It was also found that they had wrongly availed the cenvat



credit of Swachh Bharat Cess, as tabulated above. On a reading of the Rule 3(1) of the Cenvat Rules, it appeared that Swachh Bharat Cess was not a specified duty/cess for the purpose of availment of cenvat credit. Hence, cenvat credit of Swachh Bharat Cess was not allowed either to a manufacturer or producer of final products or a provider of output service.

2.1.3. The said assessee had knowingly availed cenvat credit on the invoices stated above which had a date beyond 1 year. It also appeared that despite not having documents/proper documents, they had knowingly availed cenvat credit. It, therefore, appeared the burden of proof of admissibility of cenvat credit had not been satisfied by the assessee, in terms of the provisions of Rules 9(5) and 9(6) of the Cenvat Rules. Accordingly, the cenvat credit availed by the assessee amounting to Rs 62,87,558/-, as tabulated above, was found to be inadmissible.

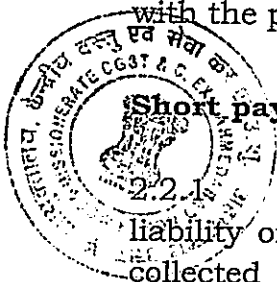
2.1.4. From the foregoing facts and discussions, the assessee had contravened the provisions of:

- Rules 9(1) and Rule 9(2) of the Cenvat Rules as they have wrongly availed the cenvat credit without the cover of documents/proper documents;
- Rules 9(5) and 9(6) of the Cenvat Rules, as they have failed to discharge the burden of proof regarding the admissibility of cenvat credit;
- Rule 4(1) of the Cenvat Rules as they have wrongly availed cenvat credit on an invoice which was beyond 1 year; and
- Rule 3(1) of the Cenvat Rules read with the provisions of Rule 2(1) of the Cenvat Rules as they have wrongly availed the cenvat credit of swachh bharat cess.

2.1.5. It was found that the assessee had not disclosed to the revenue that they had availed cenvat credit without the cover of documents/proper documents, wrongly availed the cenvat credit of swachh bharat cess and wrongly availed the cenvat credit on invoices which were more than 1 year old. This could only had been detected during the course of audit. Thus they had suppressed the material facts by wrongly availing the cenvat credit with an intent to evade the payment of service tax. Accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules was applicable for invoking the extended period of 'five years' for recovery of service tax amounting to Rs 62,87,558/-, as tabulated above. Accordingly the said assessee had wrongly availed the cenvat credit as discussed above and therefore, interest was to be charged and recovered from the assessee under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. Further by the act of not disclosing the fact that they did not had documents/proper documents for availing the cenvat credit as discussed above, they had suppressed the material facts with an intent to evade the payment of service tax. It, therefore, the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules.

Short payment of service tax due to rate difference in case of cancellation

2.2.1. It was observed that the assessee had discharged the service tax liability on the net member contribution collected during the period (amount collected during the year minus the amount refunded to the customer on booking cancellation during the period), as per the prevailing rate of service tax



at the material time. This had resulted into adjustment of service tax calculated on the amount paid on cancelled booking at the rate of service tax prevailing on the date of cancellation.

2.2.2. Rule 6(3) of the Rules reads as under:

"(3) Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract the assessee may take the credit of such excess service tax paid by him, if the assessee -

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

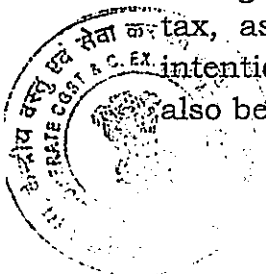
(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued".

2.2.3. The adjustment was allowed only of the actual amount of service tax paid on the cancelled bookings at the rate of service tax prevailing at the time of booking and not at the rate of service tax prevailing at the time of cancellation. Accordingly the assessee had wrongly made the adjustment and netted the cancellation amount with the booking amount received during the year. Hence the difference of rate of service tax prevailing at the time of cancellation and the rate of service tax prevailing at the time of booking was required to be recovered from the assessee. The details are tabulated below. The worksheet for short payment of service tax relating to rate difference is relied on for this notice.

Period	Excess amount adjusted on account of rate difference in service tax (Rs)
2015-16	12963
2016-17	91340
2017-18 (upto June 2017)	15793
Total	120096

2.2.4. Accordingly the said assessee had contravened the provisions of Rule 6(3) of the Rules as they had failed adjust the excess amount properly.

2.2.5. Thus, the said assessee had wrongly adjusted the excess amount on account of rate difference in service tax knowingly and had short paid service tax. This could only had been detected during the course of audit. It, therefore, appeared that they had suppressed the material facts with an intent to evade the payment of service tax. Accordingly, the proviso to Section 73(1) of the Act was applicable for invoking the extended period of 'five years' for recovery of service tax amounting to Rs 1,20,096/-, as tabulated above. As the assessee had wrongly adjusted the excess amount due to the rate difference and therefore, interest was to be charged and recovered from the assessee under the provisions of Section 75 of the Act. Further, by the act of wrong adjustment of excess amount on account of rate difference in service tax, as discussed above, they had suppressed the material facts with an intention to evade the payment of service tax. Therefore the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act.



Penalty for late filing of ST-3 returns

2.3.1 It was noticed that the said assessee had delayed the filing of their ST3 returns as tabulated below:

Period of Return	Due date of return	Actual date of filing	Delay in filing	Penalty for Late-filing (Rs)
April-September,2015	25/10/2015	07/11/2015	13	500
October-March,2016	29/4/2016	10/5/2016	11	500
April-June,2017	15/8/2017	27/12/2017	134	11400
Total				12400

2.3.2. From the above table, the ST3 returns were filed after the due date for filing these returns and also no late fees were paid on such delay as prescribed under Section 70 of the Finance Act, 1994 ('Finance Act') read with the provisions of Rule 7C of the Service Tax Rules, 1994.

2.3.3. The assessee had filed their ST3 returns which were delayed beyond the prescribed due dates and therefore, they were liable to pay total late fees amounting to Rs 12,400/- as tabulated above, under the provisions of Section 70(1) of the Finance Act read with the provisions of Rule 7C of the Rules.

2.4 Non-reversal of cenvat Credit utilized for the unsold flats after receipt of Building Use permission ('BU')

2.4.1. During the course of audit, it was observed that the assessee was engaged in the activity of construction services of residential Units. They were availing cenvat credit of the service tax paid on the input services received by them for their construction activities and were utilizing the cenvat credit for payment of service tax. It was also observed that out of the various Units constructed by them, some of them had been booked/sold after the issuance of the completion certificate issued by the competent authority.

2.4.2. With effect from 1.7.2012, certain activities had been made chargeable to service tax as "Declared Services" by virtue of the provisions of Section 66E of the Finance Act, 1994 ('Act'). The relevant text to Section 66E of the Act is as under:

"Section 66E: The following shall constitute declared services, namely :—

- b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation. — For the purposes of this clause,—

- (i) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force"

After the completion certificate was received, the residential Units sold would be deemed to be sale of immovable property as per the definition of 'service', provided under the provisions of Section 65B(44) of the Act read with the provisions of Section 66E(b) of the Act. The relevant text to Section 65B(44) of the Act is reproduced below:



(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—
(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

2.4.4. From the above definition of 'service', it is seen that sale of an immovable property was excluded from the definition subject to the provisions of Section 66E(b) of the Act. It was observed that the assessee had developed a scheme named 'Tirupati Aakruti Greenz' having blocks from A to F. The BU permission was granted on 22.4.2016. It was seen that at the time of obtaining the BU permission certain residential Units remained unsold in Blocks A and B. It appeared that the assessee was not liable to pay service tax on the residential Units sold after the receipt of the BU permission.

2.4.5. It was seen that during the course of construction of the residential Units, builders utilize the services of various labour contractors such as electrical contractors, furniture contractors, tiles fitting contractors, colour contractors, etc. In addition to the above, they also utilize certain services such as security service, telephone service, housekeeping service, etc. The builder/developer received service tax paid invoices for these services and they availed the cenvat credit of the tax paid by them. The admissibility of cenvat credit flows from the authority provided under Rule 3 of Cenvat Credit Rules, 2004 ('Cenvat Rules'). The relevant text to Rule 3(1) of the Cenvat Rules is reproduced as under:

"RULE 3. CENVAT credit—(1) A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of the duties, taxes, cess specified in the said rule paid on -

- (i) any input or capital goods received in the factory of manufacture of final product or [by] the provider of output service on or after the 10th day of September, 2004; and
(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004"

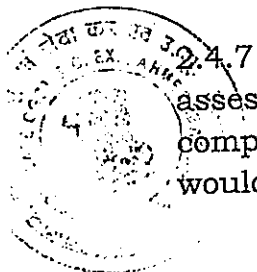
2.4.6. It was seen that cenvat credit was available to the assessee on the service tax paid on input services received by them. As can be seen from the definition of 'Service', residential Units sold after the receipt of completion certificate (BU permission) would be out of the ambit of 'service' and no service tax would be leviable.

Rule 2(l) of the Cenvat Rules reads as under:

"(l) "input service" means any service, -

- (i) used by a provider of [output service] for providing an output service; or
(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal"

It was found that there was no output service provided by the assessee when they book/sell the residential Units after the receipt of the completion certificate. In view of the above, it appeared that the said assessee would not be entitled to take cenvat credit to the services utilized for



construction of units which had been booked/sold after the receipt of the completion certificate, under the provisions of Rule 2(l) of the Cenvat Rules.

2.4.8 The details of the reversal of cenvat credit not made is tabulated below:

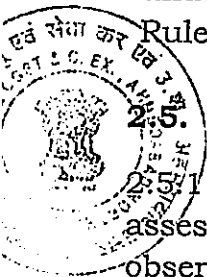
Period	Credit Taken	Ineligible Credit	Total Eligible Credit	Sub-Total	Remarks	
2014-15 (from Oct-14)	2,838,830	652,811	2,186,019			
2015-16	5,591,614	2,553,461	3,038,153			
2016-17 (Apr-16)	1,397,119	18,015	1,379,104	6,603,276	Credit upto Apr-16	
2016-17 (May-16 to Mar-17)	2,709,667	2,507,774	201,893			
2017-18 (upto June-17)	1,129,175	555,497	573,678	775,571	Credit May-16 onwards	
Block	Area	Completion Stage	Area Completed	Proportion	Proportionate Credit	
Block-A	12,724	100	12,724	20.42%	1,348,096	
Block-B	12,724	100	12,724	20.42%	1,348,096	
Block-C	11,318	80	9,054	14.53%	959,263	
Block-D	11,023	80	8,818	14.15%	934,259	
Block-E	11,032	85	9,377	15.05%	993,484	
Block-F	11,327	85	9,628	15.45%	1,020,078	
Total	70,148		62,325		6,603,276	
Block	Area	Proportionate Credit	Area Sold before BU	Unsold Area as on the date of BU	Unsold Area as % of total area	Credit to be reversed
Block-A	12,724	1,348,096	8401	4,323	33.98	458,083
Block-B	12,724	1,348,096	7618	5,106	40.13	540,991
Total						999,074

2.4.11 Accordingly, the assessee had contravened the provisions of Rule 3(l) of the Cenvat Rules read with the provisions of Rule 2(l) of the Cenvat Credit Rules, 2004 as they had availed cenvat credit improperly and also failed to reverse the proportionate cenvat credit.

2.4.12 Thus the assessee had wrongly availed cenvat credit of service tax on input services and also had failed to reverse the proportionate cenvat credit, availed on the input services in respect of residential Units not booked/sold before the BU permission was received. They had also suppressed the material facts with an intent to wrongly avail the cenvat credit. Accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules was applicable for invoking the extended period of 'five years' for demand and recovery of cenvat credit of Rs 9,99,074/-. As the assessee had not reversed the cenvat credit as discussed above and therefore, interest was to be charged and recovered from the assessee under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. It appeared that by the act of not reversing the proportionate cenvat credit in contravention of the provisions of Rule 3(1) of the Cenvat Rules read with the provisions of Rule 2(l) of the Cenvat Rules, the assessee had suppressed the material facts with an intention to wrongly avail cenvat credit, as discussed above and it, therefore, the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules.

Short payment of Service tax on Security Expenses

On reconciliation of the Security Service Expenses incurred by the said assessee as per their trial balance/ledgers vis-à-vis their ST-3 returns, it was observed that the said assessee had short paid service tax as a recipient of the services. It was informed by the said assessee that the difference was mainly on account of the invoices issued by M/s Rajput Security & Investigation Services



and Others where the service provider had charged the Service Tax. It was seen that M/s Rajput Security & Investigation Services was a proprietary concern and therefore, had no liability to pay service tax as they had provided services to the assessee which was a body corporate, in terms of the Notfn No 30/2012-ST dated 20.6.2012, as amended by Notfn No 45/2012-ST dated 7.8.2012. It also appeared that in respect of other persons who had provided security service to them, they did not produce the proper document in terms of the provisions of Rule 9 of the Cenvat Rules to substantiate their contention. The details of the differential value and the service tax short paid has been tabulated as below: (Rupees in actuals)

Period	Security Service expense as per Trial Balance	Amount on which Service tax paid under reverse charge mechanism as per their ST3 returns	Difference	Service Tax Payable
2015-16	537104	302204	234900	34060
2016-17	670187	256500	413687	62053
			Total	96113/-

2.5.2. The relevant text to Notfn No 30/2012-ST dated 20.6.2012, as amended by Notfn No 45/2012-ST dated 7.8.2012, is reproduced as under:

"In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

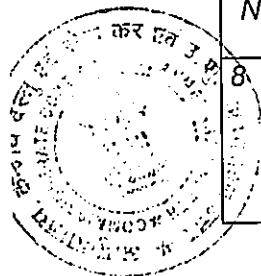
I. The taxable services, -

(A)(v) provided or agreed to be provided by way of supply of security service by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following table, namely: -

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8	in respect of services provided or agreed to be provided by way of security services	Nil	100%"



2.5.3 The person liable to pay service tax under the reverse charge mechanism had also been stipulated under Rule 2(1)(d) of the Rules, which reads as under:

"[(d) "person liable for paying service tax", -

(F) in relation to services provided or agreed to be provided by way of :-

(b) security service

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

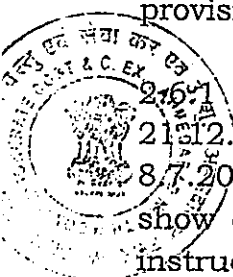
2.5.4. In view of the provisions of Section 68(2) of the Act read with the provisions of Rule 2(1)(d)(F)(b) of the Rules and Notfn No 30/2012-ST dated 20.6.2012, as amended by Notfn No 45/2012-ST dated 7.8.2012, the service recipient was liable to pay 100% of the service tax in respect of the legal Services.

2.5.5 From the foregoing facts and discussions, it appears that the assessee have contravened the provisions of:

- Section 68(2) of the Act read with Rule 6 of the Rules as they have failed to pay service tax at the rate specified in Section 66B of the Act in such manner and within such period as may be prescribed;
- Section 70 of the Finance Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

2.5.6 The assessee had not disclosed to the revenue that they had received the security services. They had not paid the service tax on the security services on recipient basis and not shown the details in any of the records/returns before the audit objection was detected. It, therefore, appeared that they had suppressed the material facts and it appeared that there was an intent to evade the payment of service tax and accordingly, the proviso to Section 73(1) of the Finance Act was applicable for invoking the extended period of 'five years' for recovery of service tax amounting to Rs 96,113/-. As the assessee had not paid the service tax as discussed above and therefore, interest was to be charged and recovered from the assessee under the provisions of Section 75 of the Finance Act. The act of not disclosing the security services received by them and not paying the service tax on these services on recipient basis as discussed above, the assessee had suppressed the material facts with an intention to evade the payment of service tax, Therefore, the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Finance Act.

As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre-consultation had been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Based on these instructions, a communication was made to the assessee fixing the date for pre-consultation discussion on 18.6.2020. Mr Kiran B Parikh, Chartered



Accountant appeared on behalf of the assessee on 18.6.2020. He stated that the issue in Revenue Para No 1 had been settled under the SVLDRS scheme. Copies of SVLDRS 1,3 & 4 were provided by him. For the remaining paras, he stated that they could be decided on merits.

2.6.2 A communication was made on 19.6.2020 to the Joint Commissioner of Central Tax, Circle IX, Audit Commissionerate, Ahmedabad for getting the SVLDRS 4 form to be verified from the jurisdictional Commissionerate. The Superintendent of Central Tax, AP 57, Circle IX, Audit Commissionerate, Ahmedabad under her letter dated 19.6.2020 had enclosed the copy of SVLDRS 4 issued by the Designated Committee on 24.1.2020. It had been certified that a payment of Rs 5,62,958.40 had been made for settling the arrears of Rs 14,07,396/-. Accordingly, it was seen that Revenue Para No 1 of the Final Audit Report No 1645/2019-20 dated 5.6.2020 was settled by virtue of the SVLDRS 4 discharge certificate from the designated committee.

2.6.3 In view of the above facts, Show Cause Notice had been issued to M/s. Tirupati Sarjan Limited wherein they were called upon to show cause as to why:

- i. cenvat credit amounting to Rs 62,87,558/- (Rupees Sixty two lacs eighty seven thousand five hundred fifty eight only), should not be disallowed and recovered from them, as tabulated above, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules;
- ii. service tax amounting to Rs 1,20,096/- (Rupees One lac twenty thousand ninety six only), as tabulated above, should not be demanded and recovered from them, under the proviso to Section 73(1) of the Act;
- iii. late fees/penalty of Rs 12,400/- (Rupees Twelve thousand four hundred only), as tabulated above, should not be charged and recovered from them, under the provisions of Section 70 of the Act read with the provisions of Rule 7C of the Rules;
- iv. cenvat credit amounting to Rs 9,99,074/- (Rupees Nine lacs ninety nine thousand seventy four only), should not be disallowed and recovered from them, as tabulated above, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules;
- v. service tax amounting to Rs 96,113/- (Rupees Ninety six thousand one hundred thirteen only), should not be demanded and recovered from them, under the proviso to Section 73(1) of the Act;
- vi. Penalty should not be imposed on them under the provisions of Section 78(1) of the Act on the proposed demand at (ii) and (v) above; and
- vii. Interest should not be charged and recovered from them under the provisions of Section 75 of the Act on the proposed demand at (ii) and (v)above.
- viii. Penalty should not be imposed on them under the provisions of Section 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules on the proposed demand at (i) and (iv) above; and



- ix. Interest should not be charged and recovered from them under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the proposed demand at (i) and (iv) above.

DEFENCE REPLY

3. In reply to the show cause notice, the said assessee vide their letters dated .15.07.2021 July 2021 & 30.07.2021 submitted their point wise reply as under:

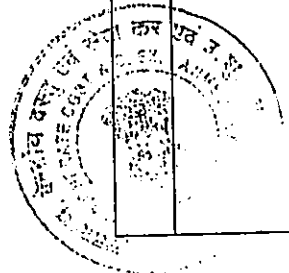
[1]. DISALLOWANCE OF CENVAT CREDIT Rs. 62,87,558/-

3.1 The said assessee requested to refer the tabular format being part of SCN (at Point No. 3 of the Show Cause Notice) describing item wise and Sl.No. wise disallowance of aggregate CENVAT Credit of Rs. 62,87,558/-. They have submitted the reply in the same tabular format giving justification of allowance of itemwise and serial no. wise CENVAT credit with reasons for the same.

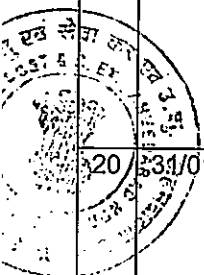
2014-15					
Sr No	Date	Name of the Service Provider of the assessee	Credit Amount	Remarks	Reply
1	2014-15	Credit Taken during the months of Nov-2014, January-2015 and March-2015 as per ST-3 return	71508.00	No supporting documents related to the said amount (as mentioned in service tax returns) are Provided	We agree
2	01/12/2014	SGS India Pvt Ltd	550.00	Credit availed after one year from the date of invoice i.e. 13-09-2013.	We agree
3	01/01/2015	Poojaben Prakashkumar Mehta	505043.00	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available. Invoice/Bill could not be furnished by the assessee.	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No – BTNPM4051QSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
4	01/01/2015	Pankaj Construction	13905		Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No – ETOPS0945RSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
5	21/03/2015	Julie Khatoon Mohammad Shamshad Alam	61805.00		Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No – DUOPK8032DSD002 The assessee is having appropriate duty paying document to avail input credit And the same is eligible

Total -2014-15	652811.00
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2015-16					
Sr No	Date	Name of the Service Provider of the assessee	Credit Amount	Remarks	
1	2015-16	Credit of SB Cess taken on different invoices during 2015-16	2080.00	Credit of SBC is not available in terms of CCR,2004	We agree
2	2015-16	Difference of credit as per ST-3 and Credit Register (Oct-2015)	11092.00	Credit Taken. 339992 Credit as per Cenvat Register: 328900 Diff. : 11092 No documentary evidence is available justifying the difference.	We agree
3	01/04/2015	Jay Ramdev Weiding Works	7684.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AFPPC7933JSD003
4	30/04/2015	Deep Security Force	459.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. - AFAPD9171QST001
5	18/05/2015	Rajesh J.Shah & Associates	618.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AADFR0856JST001 Rajesh J. Shah & Associates have also submitted other invoices on which service-tax credit has been allowed except the above invoice
6	31/05/2015	Julie Khatoon Mohammad Shams had Alam	724456.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. DUOPK8032DSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
7	30/06/2015	Julie Khatoon Mohammad Shams had Alam	95150.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. DUOPK8032DSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
8	01/7/2015	Poojaben Prakashkumar Mehta	107775.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. Service tax Regi No BTNPM4051QSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
9	01/07/2015	Poojaben Prakashkumar Mehta	114180.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. BTNPM4051QSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible

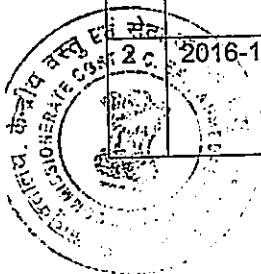


10	01/07/2015	PoojabenPrakashkumarMehta	399009.0	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. BTNPM4051QSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
11	01/18/2015	Surti Pest Control Service	4920.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AOBPS7340NST001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
12	17/08/2015	Anand Environmental Consultants (P) Ltd	7000.0	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AAKCA4904ASD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
13	01/10/2015	Helix Security & Consultancy Services	1932.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.TAX:-AHTPC0284EST001
14	20/10/2015	Helix Security & Consultancy Services	4877.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.TAX:-AHTPC0284EST001
15	31/10/2015	Rajput Security & Investigation Services	4200.0	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
16	01/12/2015	Rajput Security & Investigation Services	7980.0	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Regno. of the service provider was not mentioned on the invoices). Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
17	31/12/2015	Rajput Security & Investigation Services	7770.0	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Regno. of the service provider was not mentioned on the invoices). Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
18	01/01/2016	Voice Etc	933.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AAHFV8294QSD001
19	25/01/2016	Vistas Engineers Pvt. Ltd	31097.00	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Regno. of the service provider was not mentioned on the invoices).	Enclosed
20	31/01/2016	Rajput Security & Investigation Services	9030.00	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Regno. of the service	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001

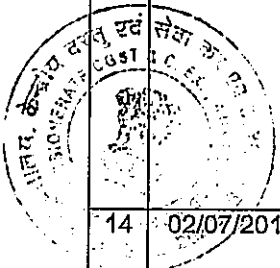


				provider was not mentioned on the invoices). Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time	
21	01/02/2016	Julie Khatoon Mohammad Shams had Alam	329311.00	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Name address et of Service recipient is not mentioned. Provider has charged service tax @12.36% however, assessee has taken credit @14.5% of the invoice value)	Enclosing herewith invoice S.T. Reg. No. DUOPK8032DSD001
22	01/02/2016	Poojaben Prakash umar Mehta	329311.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. BTNPM4051QSD001
23	01/02/2016	E- Procurement Technologies Limited	1167.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AABCE7478AST001
24	22/02/2016	Pankaj Construction	329312.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. ETOPS0945RSD001
25	01/03/2016	Rajput Security & Investigation Services	8106.00	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No.30/2012-ST as amended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
26	15/03/2016	Dhanvantri Landscaping & Gardening Services	8525.00	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoices)	We agree
27	18/03/2016	New S. K. Roof Care	1015.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AAJFN6719NSD001
28	31/03/2016	TPS Thakur Perfect Service	4472.00	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
	Total -2015-16		2553461.00		

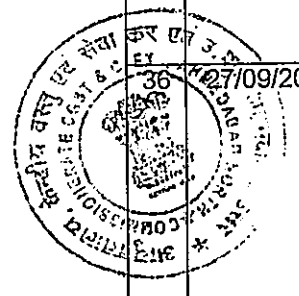
2016-17					
Sr No	Date	Name of the Service Provider of the assessee	Credit Amount	Remarks	
1	2016-17	Credit of SB Cess taken on different invoices during 2016-17	4400	Credit of SBC is not available in terms of CCR, 2004	We Agree
	2016-17	Difference of credit as Per st-3 and Credit register (April-2016)	4365	Credit Taken: 1397119 Credit as per Cenvat Register: 1392754 Diff.: 4365	We agree



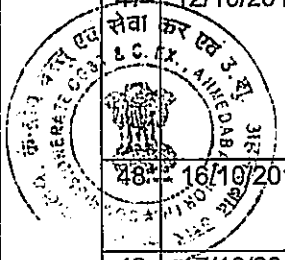
				documentary evidence is available justifying the difference.	
3	05/04/2016	Rainmake	175	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No.
4	30/04/2016	TPS Thakur Perfect Service	4655	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
5	30/04/2016	Rajput Security & Investigation Services	8820	Invoice/Bill could not be furnished by the assessee, Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
6	31/05/2016	TPS Thakur Perfect Service	4778	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
7	31/05/2016	Rajput Security & Investigation Services	7602	Invoice/Bill could not be furnished by the assessee, Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
8	31/05/2016	TPS Thakur Perfect Service	1276	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
9	01/07/2016	TPS Thakur Perfect Service	4760	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
10	01/07/2016	Rajput Security & Investigation Services	5950	Invoice/Bill could not be furnished by the assessee, Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
11	01/07/2016	Spartan Engg Ind Pvt Ltd	980	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice
12	01/07/2016	Abhivakti Communication	152	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AAJFA2921PST001
13	01/07/2016	Rajput Security & Investigation Services	9092	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-5T as amended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
14	02/07/2016	TPS Thakur Perfect Service	1074	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
15	22/07/2016	Poojaben Prakash Kumar Mehta	2460	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not	Copy of Invoice and Ledger Attached H/w for Your Verification
16	22/07/2016	Poojaben Prakash	525		



17	22/07/2016	Kumar Mehta PoojabenPrakash Kumar Mehta	3825	available (Name address etc of the service recipient andService Tax Reg no. Andaddress of the service Providerwas not mentioned on theinvoices)	Service tax Regi No - BTNPM4051QSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
18	22/07/2016	PoojabenPrakash Kumar Mehta	1275		
19	22/07/2016	PoojabenPrakash Kumar Mehta	4620		
20	22/07/2016	PoojabenPrakash Kumar Mehta	1950		
21	22/07/2016	PoojabenPrakash Kumar Mehta	2962		
22	22/07/2016	PoojabenPrakash Kumar Mehta	2295		
23	22/07/2016	PoojabenPrakash Kumar Mehta	5010		
24	22/07/2016	PoojabenPrakash Kumar Mehta	1912		
25	22/07/2016	PoojabenPrakash Kumar Mehta	4042		
26	22/07/2016	PoojabenPrakash Kumar Mehta	71888		
27	22/07/2016	PoojabenPrakash Kumar Mehta	10672		
28	22/07/2016	PoojabenPrakash Kumar Mehta	138083		
29	31/07/2016	Rajput Security & InvestigationServic es	5810		
30	31/07/2016	TPS Thakur Perfect	1193	Invoice/Bill could not befurnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
31	10/08/2016	Vision HVAC Pvt Ltd	518	Invoice/Bill could not befurnished by the assessee	Enclosing herewith invoice
32	31/08/2016	Rajput Security & InvestigationServic e	6510	Invoice/Bill could not befurnished by the assessee,Further Security ServiceProvider, being Proprietor, noteligible to charge S/Tax in terms of No. No. 30/2012-ST asamended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
33	31/08/2016	TPS Thakur Perfect Services	4900	Invoice/Bill could not befurnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
34	31/08/2016	TPS Thakur Perfect	1153	Invoice/Bill could not befurnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
35	08/09/2016	Shri Sai Contractor	34950	Proper Tax paying document interms of Rule 9 of CCR, 2004 isnot available (Name address etcof the service reciPient andService Tax Reg no. Andaddress of the service Providerwas not mentioned on theinvoice)	Enclosing herewith invoice S.T. Reg. No.
36	27/09/2016	Mahavir Glass EnterPrise	384	Proper Tax paying document interms of Rule 9 of CCR, 2004 isnot available (Name address etcof the service reciPient andService Tax Reg no. Andaddress of the service Providerwas not	Enclosing herewith invoice S.T. Reg. No. AAPFM2544QST001



				mentioned on the invoice)	
37	30/09/2016	Julie Khatoon Mohammad Shams had Alam	410960	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Name address etc of the service recipient and Service Tax Reg no. And address of the service Provider was not mentioned on the invoice)	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No - DUOPK8032DSD002 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
38	30/09/2016	Poojaben Prakash kumar Mehta	391728	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No - BTNPM4051QSD001 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
39	30/09/2016	Astha Security & Labour Supplier	6750	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice
40	01/10/2016	Mahavir Glass EnterPrise	285	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AAPFM2544QST001
41	01/10/2016	Pankaj Construction	362951	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. ETOPS0945RSD001
42	01/10/2016	K G Flooring	553343	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No AAQFK0320BSD002
43	03/10/2016	TPS Thakur Perfect Services	742	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
44	12/10/2016	K G Flooring	18709	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No
45	12/10/2016	K G Flooring	47490	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No AAQFK0320BSD002
46	12/10/2016	K G Flooring	46771	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No AAQFK0320BSD002
47	12/10/2016	K G Flooring	2465	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No AAQFK0320BSD002
48	16/10/2016	Mahavir Glass EnterPrise	280	Invoice/Bill could not be furnished by the assessee	AAPFM2544QST001
49	17/10/2016	Sahajanand Colour Anodise (AAIHA	34567	Invoice/Bill could not be furnished by the	We Agree



		4900 M)		assessee	
50	17/10/2016	Sahajanand Colour Anodise (AAIHA 4900 M)	30471	Invoice/Bill could not be furnished by the assessee	We Agree
51	17/10/2016	MahavirGlassEnter Prise	444	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No AAPFM2544QST001
52	31/01/2016	TPS Thakur Perfect Services	5800	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
53	01/11/2016	Astha Security & Labour Suppliers	8437	Proper Tax paying document interms of Rule 9 of CCR, 2004 is not available (S.T Reg no.of the service Provider was not mentioned on the invoice)	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No
54	8/11/2016	Jay Ramdev Welding Works	52081	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. 'AFPPC7933JSD003
55	9/12/2016	MahavirGlassEnter Prise	127.5	Proper Tax paying document interms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service Provider was not mentioned on the invoice)	Enclosing herewith invoice S.T. Reg. No. AAPFM2544QST001
56	11/12/2016	Nilesh Enterprise	357.5	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice
57	31/12/2016	TPS Thakur Perfect Services	5800	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
58	31/01/2017	TPS Thakur Perfect Services	5800	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
59	02/03/2017	Jay Ramdev Welding Works	31880	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. 'AFPPC7933JSD003
60	31/03/2017	Julie Khatoon MohammadShams hadAlam	133949	Invoice/Bill could not be furnished by the assessee	Copy of Invoice and Ledger Attached H/w for Your Verification Service tax Regi No - DUOPK8032DSD002 The assessee is having appropriate duty paying document to avail input credit And the same is eligible
61	31/03/2017	TPS Thakur Perfect Services	7685	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. AZSPK0166ESD001
		Total 2016-17	2525789		

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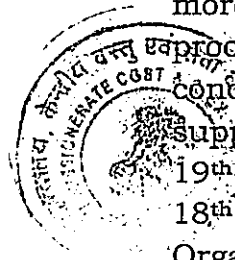
2017-18					
Sr	Date	Name of the Service Provider of the assessee	Credit Amount	Remarks	
-1	2017-18	Credit of SB Cess	87		We Agree



		taken on different invoices during 2017-18 (Apr-June)			
2	2017-18	difference of credit as per ST-3 and Credit register (April-2017)	352564	Credit Taken:486167 Credit as per Cenvat Register: 133603 Diff.:352564 No evidence is available justifying the difference.	We Agree
3	2017-18	difference of credit as per ST-3 and Credit register (April-2017)	8826	Credit Taken:186443 Credit as per Cenvat Register:177617 Diff.:8826 No documentary evidence available justifying the difference.	We Agree
4	2017-18	other credit taken in June-2017	76412	No documentary evidence is available	We Agree
5	19/04/2017	adishwar advertising	522	Invoice/Bill could not be furnished by the assessee	Enclosing herewith invoice S.T. Reg. No. -
6	20/04/2017	Ashishteli	58000	Invoice/Bill could not be furnished by the assessee	
7	30/04/2017	Rajput Security & Investigation Service	8700	Invoice/Bill could not be furnished by the assessee. Further Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
8	31/05/2017	Rajput Security & Investigation Service	8108	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time.	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
9	28/06/2017	Supersil Architectural Products Pvt Ltd	34257	Credit taken after one year from the date of invoice i.e. 04.09.2015.	Copy of Ledger Attached herewith
10	30/06/2017	Rajput Security & Investigation Service	8021	Security Service Provider, being Proprietor, not eligible to charge S/Tax in terms of No. No. 30/2012-ST as amended from time to time	Enclosing herewith invoice S.T. Reg. No. ADBPV2949RST001
		Total -2017-18 Q1	555497		

GRT AND TOTAL 62,87,558/-

3.2 In their reply, they submitted that the invoices were lying in peace meal in different files. They had been in process of compilation of bills lying in different files and producing the same together before the Audit Party. Further more, several bills were not legible. Hence, the assessee company had been in a process of contacting related suppliers and obtaining legible version of the concerned bill/invoice duly signed and authenticated by the concerned supplier. Also, the Government declared Nation wise Lockdown with effect from 19th March, 2020 on account of spread of Covid 19 pandemic and lasted up to 18th May, 2020. Further, several members of the Assessee Company Organization had been subject to the corona disease and henceforth the delay in submission of bills and vouchers for the Input Credit has occurred. They have enclosed copies of invoices, proof of the supplier having service-tax



registration no. as downloaded from the on-line site, relevant ledger account duly certified by the Chartered Accountants and accompanied by the relevant bank statements.

3.3 The said assessee further submitted that different suppliers have provided, NORMALLY, following kinds of input services which have been consumed in providing residential construction services.

1. Labour Service with Rate and Measurement
2. Security Services
3. Other Services

3.4 It could be discerned from the invoices and ledgers that there has been legitimate payments to the supplier of services through banking channel. Further more, the Service-tax Department and the Show Cause Notice have not observed any short payment of service-tax on output services provided by the assessee. It is therefore submitted that the above input services have been genuinely and legitimately consumed in providing taxable output services on which relevant output service-tax liability has been duly discharged by the assessee company and there has been no adverse remark there about. They requested to refer the following;

1. Ascent Laboratories v. CCE (2008) 221 ELT 583 (CESTAT)

It has been consistent view of the Tribunal that Cenvat credit cannot be denied for procedural lapses once the receipt of goods and its use in manufacture of finished products is not denied. In case of the assessee in the matter under consideration, there has been no observation or dispute that the said services have not been utilized and consumed by the assessee company for providing the taxable output services.

2. In Larsen & Tourbro v. CCE 2001 (127) ELT 807 (CEGAT SMB), it was held that assessee should not be penalized (by denying Cenvat Credit) for mistake of seller of goods.

3.5 They further submitted that the assessee company has received security services from following security service providers;

- i. Rajput Security and Investigation Service being proprietary concern

3.6 Here, the security service provider has charged service-tax on invoices. Copy of invoices have been duly enclosed herewith. The SCN states that since, the security services have been received from proprietary security service providers and service-tax had to be deposited by the company under the RCM mechanism, the same is not eligible as CENVAT Credit since, the service-tax amount has been collected by the proprietary security service providers. They requested to refer the Rule 9 of the CENVAT Credit Rules, 2004 which mentions about as under:

9. (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely : -
(a) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax (this rule is applicable when service-tax is deposited under the Reverse Charge Mechanism); or
(b) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004;



Here, the security service providers have provided services as proprietor. The same have issued appropriate invoice mentioning their service-tax registration no. and amount of service-tax charged.

We, respectfully, submit that even if the assessee company had discharged the service-tax liability under the RCM mechanism in respect of the security services, the same would have been eligible to avail CENVAT Credit on the basis of the duty paying document as allowed under Clause (e) to Rule 9(1).

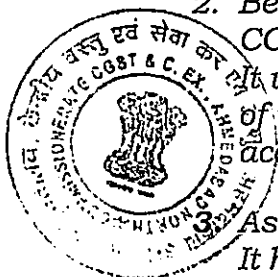
3.7 Here, the assessee company submitted that they have availed CENVAT Credit under Clause (f) to Rule 9(1) on the basis of invoice issued by a provider of input service and submitted that had the assessee company deposited service-tax under the Reverse Charge Mechanism on receiving security services, it had been eligible to avail and utilize CENVAT Credit under Clause (3) to Rule 9(1) of the CENVAT Credit Rules, 2004. However, here the assessee company has deposited the service-tax on security service invoices wherein service-tax has been charged by the Security Service Provider under the forward charge mechanism. Under the said scenario, the assessee company has been eligible to avail and utilize input credit under Clause (f) to Rule 9(1).

3.8 The said assessee relied upon the following judgments wherein it has been held that where there is revenue neutral exercise and there has been no loss of revenue to the Government then CENVAT Credit cannot be denied.

1. *Alembic Ltd. V. Commissioner of Central Excise, Vadodara* 2007 (218) ELT 607 (Tri.- Ahmedabad)
2. *Commissioner of C. EX., Pune V. Coco-Cola India Pvt Ltd.* 2007 (213) E.L.T. 490 (S.C.)
3. *Indeos Abs Limited. V. Commr. Of C. Ex & Cus., Vadodara-II* 2010 (254) E.L.T. 628 (Guj.)
4. *International Auto Ltd. V. Commissioner of Central Excise, Bihar* 2005 (183) E.L.T. 239 (S.C.)
5. *Commissioner Of C. Ex., Jamshedpur V. Jamshedpur Beverages* 2007 (214) E.L.T. 321 (S.C.)
6. *Commr. Of C. Ex. & Cus. (Appeals), Ahmedabad V. Narayan Polyplast* 2005 (179) E.L.T. 20 (S.C.)
7. *Commissioner Of C. Ex. & Cus., Vadodara V. Narmada Chematur Pharmaceuticals Ltd.* 2005 (179) E.L.T. 276 (S.C.)
8. *Commissioner Of Cus. & C. Ex. V. Textile Corpn. Marathwada Ltd.* 2008 (231) E.L.T. 195 (S.C.)

3.9 They further submitted certain case laws in support of their claim.

1. *Steel Authority of India Ltd. v. CCE (2010) 255 ELT 129 (CESTAT)*
Cenvat credit cannot be denied on account of procedural lapses when there is not dispute about duty paid character and receipt of the goods.
2. *Bengal Safety Industries v. CCE 1997 (92) ELT 81 (CEGAT)*
CCE v. Goyal M G Gases (2005) 1 STT 164 (CESTAT SMB)
It was held that defect in invoice is a technical lapse, on which the user of inputs has no control. Substantial benefit cannot be denied on account of technical lapses.
3. *Ascent Laboratories v. CCE (2008) 221 ELT 583 (CESTAT)*
It has been consistent view of the Tribunal that Cenvat credit cannot be denied for procedural lapses once the receipt of goods and its use in manufacture of finished products is not denied.

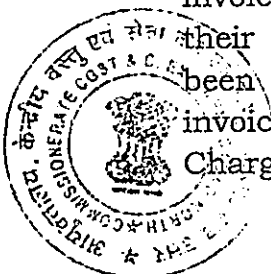


4. *Ispat Profiles v. CCE (2009) 240 ELT 260 (CESTAT SMB)*
CCE v. Atul Ltd. (2009) 237 ELT 425 (CESTAT)
Cenvat credit cannot be denied for technical errors.
5. *Lloyds Steels Industries v. CCE (2007) 211 ELT 275 (CESTAT)*
It was held that Cenvat credit is available even if invoice is not in standard format, so long as there is no dispute about payment of duty and utilization of material in the factory.
6. *CCE v. Madras Cements 2002 (145) ELT 484 (CEGAT)*
CENVAT credit was allowed even if invoices were not authenticated, holding that procedural lapses should not come in the way of denial of natural justice. If the document with reference to duty paid is not in dispute, there is no justification to deny Cenvat credit.
7. *J. K. Industries Ltd. v. UOI (2008) 223 ELT 372 (Raj HC DB), CBE&C circulars were noted and it was observed that Cenvat credit should not be denied for minor defects in invoice – same view in CCE v. Varinder Agro Chemicals (2010) 254 ELT 37 (P&H HC DB), Pearl Drinks v. CCE (2010) 260 ELT 353 (Del HC DB), CCE v. Hindalco Industries (2012) 35 STT 467 = 21 taxmann.com 200 (ALL HC DB)*
8. *In Lloyds Steel Industries v. CCE (2007) 211 ELT 275 (CESTAT), it was held that Cenvat credit is available even if invoice is not in standard format, so long as there is no dispute about payment of duty and utilization of material in factory.*
9. *In Indian Plytex v. CCE 2001 (127) ELT 396 (CEGAT), Cenvat credit was allowed when registration number, ECC code and range particulars were not available on dealer's invoice, but otherwise, duty payment was established.*
10. *In Supreme Industries Ltd. v. CCE 2005 (180) ELT 28 (CESTAT SMB), copies of invoices were badly damaged in fire and necessary particulars of payment were not legible. It was held that credit cannot be denied on this technical ground.*
11. *In CCE v. Graphite (I) (2007) 212 ELT 54 (CESTAT SMB), Cenvat credit on basis of 'cash memo' was held as admissible. It was observed that hyper technicalities should not be made to disallow Cenvat credit.*

3.10 Short Payment of service tax due to rate difference in case of cancellation With Demand of Rs. 1,20,096/-. The said assessee in their reply agreed with the point and stated that they did not content the same.

3.11 Late fees/penalty of Rs. 12,400 should not be charged and recovered under the provisions of Section 70 of the Finance Act, 1994 read with the provisions of Rule 7 C of the Rules; The said assessee is agreed with the point and stated that they did not content the same.

3.12 They further submitted that an amount of Rs. 96,113/- demand under proviso to Section 73(1) of the Finance Act, 1994 under RCM Mechanism on invoices from security service providers who have already raised service-tax on their invoices. Hence, it is, respectfully, submitted that since, invoices have been received from security services raising service-tax separately on their invoices, for the same invoices again service-tax is not liable under the Reverse Charge Mechanism.



3.13 Cenvat credit of Rs. 9,99,074/- should not be disallowed and recovered under proviso to Section 73(1) of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules; They did not agree with the above demands. They submitted that the BU permission has been granted on 22.04.2016 and henceforth whatever cenvat credit has been availed on and from that date shall only be subject to proportionate reversal. In support of their claim, the said assessee submitted the following text of case laws of M/s.Alembic Ltd Vs Commissioner of C.Ex & ST Vadodara 1 of Hon"ble CESTAT 2018(28)GSTL 71 (Tri-Ahmd) and Hon"ble High court in the case of Principal Commissioner Vs alembic Ltd. reported 2019(29)GSTL 625 (Guj) wherein it was held that

"the Tribunal therefore on a harmonious reading of rule 3 of the rules read with Rules 6 and 11(4) of the rules held that eligibility/entitlement to credit has to be examined only at the time of receipt of input services and once it is found to be availed at a time when output when output service is wholly taxable, and the said credit is availed legitimately, the same cannot be denied and /or recovered unless specific machinery provisions are made in this regard. Sub Rule(7) of Rule 4 of the rules held that the assessee is not required to wait till output service is sold to the service recipient and the assessee can take the credit immediately after the day on bill/challan of output service is received. In facts of the case, there is no dispute that the respondent availed the credit after receipt of bill/challan in respect of input service and, therefore, it was legally entitled to take credit on the date after the receipt of service bills/challans"

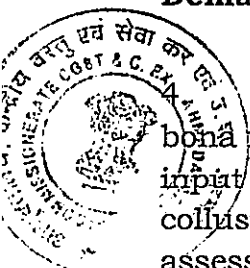
3.14 On the basis of above submission of the said assessee claimed that as per Rule 4(7) of the CCR, the assessee is not required to wait till output service is sold to the service recipient and assessee can take the credit immediately after the day on bill/challan of out put services received. They have also relied upon the case laws of in support of their claim.

- i) *Dai Ichi Karkaria Ltd 1999(112)ELT 353(SC)*
- ii) *Commissioner Vs Tractor and Farm Equipments Ltd 2015(324) ELT A86(SC)*
- iii) *Com.C.Ex.Daman Vs PSL Corrosion Control Services Ltd 2016(339)ELT 406(Guj)*
- iv) *Commissioner C.Ex of Banglore II Vs TAFE Ltd 2015(320) ELT A 185 (SC)*

3.15 They requested to have kind and sympathetic consideration of the above facts and legal submission and requested that their contention to reverse proportionate cenvat credit after the date of BU permission is fully and completely supported by above judgements. Hence they submitted that penalties are not imposable.

Demand Barred by Limitation

The said assessee further submitted that that this has been a case of bona fide belief of availing CENVAT Credit supported by legitimate challans for input services submitted herewith. There has been no intention of fraud or collusion, there has been no suppression of facts more particularly when the assessee company is producing ledger accounts of Input Service Providers along with bank statements showing that payments to the Input Service Providers have been made through bank and therefore extended period for issuance of



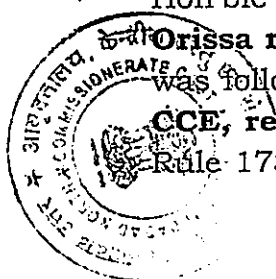
SCN is not applicable. The show cause notice dated 25.06.2020 is issued to them invoking extended period of limitation alleging that they have suppressed the fact. As per section 73(1) of the Act, where service tax is not paid, a show cause notice can normally be issued to a person chargeable with service tax, at any time within thirty from the relevant date. Section 73(6) of the Act provides that, the relevant date for such purposes is, in a case where periodical returns are required to be filed, the date on which such return was filed or the last date of filing such return, where no such return is filed. However, in a case where non short payment is by reason of fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Act or Rules with an intent to evade payment of service tax, proviso to section 73(1) of the Act provides that the show cause notice can be issued at any time within 5 years from the relevant date. Thus, the extended period of limitation is applicable only if any of the ingredients specified above exist. The allegation that the assessee have suppressed the value of taxable services with an intent to evade payment of service tax, the extended period of limitation is invocable under proviso to Section 73 (1) of the Act is totally incorrect and liable to be set aside. They further submitted that the Department was under the knowledge of the activity carried out by them, still there is statutory delay in issuance of show cause notice by the Department. Moreover, in order to allege suppression, there must be a positive act on the part of the assessee to withhold or hide the facts from the Department with a view to evade payment of tax. Mere non-payment of service tax is not enough to allege that the said assessee are guilty of suppression. In this regard, reliance is placed on the following judgments:

- (i) *Padmini Products v. CCE 1989 (43) ELT 195 (SC)*
- (ii) *CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)*
- (iii) *GopalZardaUdyog v. CCE 2005 (188) ELT 251 (SC)*
- (iv) *MP Water & Power Management Institute v. CCE (2009) 20 STT 79 (CESTAT)*
- (v) *Sapphire Security v. CCE (2010) 24 STT 277 (CESTAT) Vishal Traders v. CCE (2010) 24 STT 260 (CESTAT)*
- (vi) *Nice Colour Lab v. CCE (2013) 31 taxmann.com 407 (CESTAT)*

Penalty cannot be imposed under Section 78 of Finance Act, 1994

5. The said assessee further submitted that the penalty under Section 78 is not imposable since there is no short payment of service tax. As per the merits of the case, they are not liable for payment of Service tax. It is submitted that for imposing penalty, there should be an intention to evade payment of service tax on the part of the assessee. The penal provisions are only a tool to safeguard against contravention of the rules. They have always been and are still under the bonafide belief that they are eligible to avail and utilize the impugned CENVAT Credits. Such bonafide belief was based on the grounds given above. There was no intention to evade payment of service tax as mentioned in the ground above. Therefore, no penalty is imposable in the present case.

6. In support of the above view, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. v The State of Orissa** reported in AIR 1970 (SC) 253. The above decision of the Apex Court, followed by the Tribunal in the case of **Kellner Pharmaceuticals Ltd. Vs CCE**, reported in 1985 (20) ELT 80, and it was held that proceedings under Rule 173Q are quasi-criminal in nature and as there was no intention on the



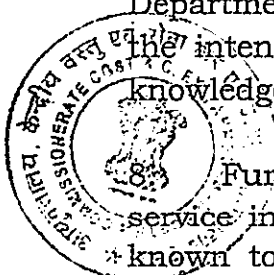
part of them to evade payment of duty the imposition of penalty cannot be justified. The ratio of these decisions squarely applies in all force to the present case. In the present case, there was neither any mala fide intention nor any intention to evade payment of tax. In view of the foregoing, no penalty is imposable. The said assessee submitted that even if any contravention of provisions the same was solely on account of their bonafide belief and such bonafide belief was based on the reasons stated above. The contraventions, if any, were not with the intention to wilfully evade payment of service tax. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Company v CCE 1995 (78) ELT 401 (SC)** wherein it was held as follows:

4. *Section 11A empowers the Department to re-open proceedings if the levy has been short levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different then what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.*

[Emphasis Supplied]

7. The further submitted that similar was the view of the Hon'ble Supreme Court in the case in **CCE Vs. Chemphar Drugs and Liniments 1989 (40) ELT 276 (SC)**, (*Supra*). The rationale of both the above-cited cases is squarely applicable to case of the Noticees. Hence no penalty under section 78 of the Act is sustainable in the present case. Section 73(3) of the Act clearly states that the Show Cause Notice needs to be issued only for the amount that is not paid by the assessee. However, the section 73(4) states that the section 73(3) shall not apply in cases of fraud, suppression etc. They submitted that the allegation of suppression has been made on them only to ensure that they are unable to take benefit of section 73(3). They have not suppressed any facts nor have any intention to evade payment of duty. It is further submitted that for imposing penalty under Section 78 of the Act, there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts. They have provided all the details as and when desired by the Department vide the letters to the Department and they at no point of time had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the Department.

Further, the assessee were and still, are of the bona-fide belief that the service in question was excluded from the levy of service tax. Thus what is known to the whole world cannot be considered to have been suppressed. Reliance is placed upon the decision of the Hon'ble Tribunal in **Electrical Mfg. Co. P. Ltd. v. CCE** reported at 1989 (40) ELT 472 [Affirmed by the Hon'ble Supreme Court in 1996 (83) ELT A44] to this effect. The said assessee *alia*



place reliance upon the following decisions to submit the information is available on record and, no suppression can be alleged on the assessee;

- (a) *Suvikram Plastex Pvt. Ltd. v. CCE, Bangalore – III 2008 (225) ELT 282 (T)*
- (b) *Rallis India Ltd. v. CCE, Surat 2006 (201) ELT 429 (T)*
- (c) *Patton Ltd. v. CCE, Kolkata – V 2006 (206) ELT 496 (T)*
- (d) *CCE, Tirupati v. Satguru Engineering & Consultants Pvt. Ltd. 2006 (203) ELT 492 (T)*
- (e) *Indian Hume Pipes Co. Ltd. v. CCE, Coimbatore 2004 (163) ELT 273 (T)*

9. It is further submitted that penalty under Section 78 of the Act can be imposed only if the assessee suppresses any information from the Department. However, they have not suppressed any fact with an intention to evade payment of service tax. Therefore, penalty under Section 78 of the Act cannot be imposed in the present case. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Akbar Badruddin Jiwani v. Collector of Customs** reported at **1990 (047) ELT 0161 SC**, wherein the Hon'ble Supreme Court has held as follows:

57. *Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the Noticee has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.*

10. Similarly, it has been held by the Hon'ble Supreme Court that there can be no suppression when the Department had knowledge of what the assessee was doing. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Company v. CCE** reported at **1995 (78) ELT 401 (SC)** and also in **CCE v. Chemphar Drugs and Liniments** reported at **1989 (40) ELT 276 (SC)**.

11. It is therefore submitted that there being no suppression, penalty under Section 78 is not applicable as none of the five conditions for imposition of penalty under Section 78 are applicable. There is no fraud; collusion; wilful mis-statement; suppression; or contravention of the provisions of Finance Act, 1994 with an intent to evade payment of duty in the present case. Further they have clearly stated that there is no suppression in the present case and also that there is no contravention of the provisions of Finance Act, 1994 with an intent to evade payment of duty and crave leave to rely on the submissions made herein above to that effect. It is therefore submitted that the proposal to impose penalty under Section 78 by relying upon the show cause notice is without legal basis and liable to be set aside.

Issue involves bona fide interpretation of law and procedural lapse

12. It is submitted that, as demonstrated above, the present issue involves interpretation of complex legal provisions. Therefore, imposition of penalty is not warranted in the present case. In this regard, reliance is placed on the

following judgments:

- (i) *Ispat Industries Ltd. v. CCE 2006 (199) ELT 509 (Tri.-Mum)*
- (ii) *Secretary, Twon Hall Committee v. CCE 2007 (8) S.T.R. 170 (Tri. - Bang.)*
- (iii) *CCE v. Sikar Ex-serviceman Welfare Coop. Society Ltd. 2006 (4) S.T.R. 213 (Tri. - Del.)*



- (iv) *Haldia Petrochemicals Ltd. v. CCE 2006 (197) E.L.T. 97 (Tri. - Del.)*
- (v) *Siyaram Silk Mills Ltd. v. CCE 2006 (195) E.L.T. 284 (Tri. - Mumbai)*
- (vi) *Fibre Foils Ltd. v. CCE 2005 (190) E.L.T. 352 (Tri. - Mumbai)*
- (vii) *ITEL Industries Pvt. Ltd. v. CCE 2004 (163) E.L.T. 219 (Tri. - Bang.)*

13. The said assessee places reliance upon the decision of the Hon'ble Supreme Court in *Hindustan Steel Ltd. v. State of Orissa* reported in AIR 1970 SC 253 wherein it was *inter alia* observed as under;

But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceedings, and the penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Where penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.

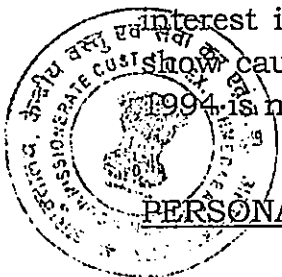
14. The above decision of the Apex Court, was followed by the Tribunal in the case of *Kellner Pharmaceuticals Ltd. v. CCE* reported in 1985 (20) ELT 80, and it was held that proceedings under Rule 173Q are quasi-criminal in nature and as there was no intention on the part of them to evade payment of duty the imposition of penalty cannot be justified. The ratio of these decisions applies in all force to the present case. In the present case, there was no intention of the assessee to evade payment of tax as the law itself provided that no service tax is leviable on the activities carried out by them. Whatever the information required to be shown or presented to the department, they have done the same. In any case all the information was always available with the Department both through public domain and the information as supplied from time to time by the Noticees. Thus no question arises of having any intent to evade the payment of tax when the law itself provides that no tax is leviable for constructing residential complexes which is already out of the scope of levy by exemption. In view of the foregoing, no penalty can be imposed on the Noticees.

INTEREST UNDER SECTION 75 IS NOT LEVIALBLE:

15. It is also submitted that when no tax liability arises, no question of interest is left for determination. For this reason, the proposal made in the show cause notice demanding interest under Section 75 of the Finance Act, 1994 is not sustainable and liable to be set aside.

PERSONAL HEARING:

16. Personal hearing was fixed on 05.05.2021, 28.05.2021 and 15.07.2021 and Shri Kiran Parikh, C.A, duly authorized representative and Shri Dilip Suthar, Accountant were, appeared for personal hearing on 15.07.2021. They submitted that they are producing bank statements, ledger accounts, invoices



to contest cenvat disallowances. Cenvat credit after BU permission should be disallowed. For security service invoices raised charging ST, hence it is eligible for credit. They have filed the written submissions.

DISCUSSION AND FINDINGS:

17. I have carefully gone through the facts and available records of the case, written submissions made by M/s.Tirupati Sarjan Limited during the course of personnel hearing. On perusal of SCN, I find that a five fold demand has been raised in the SCN which is as detailed as under:

- a) Wrong Cenvat credit taken and utilized during October 2014 to June 2017 without documents and on ineligible documents/services
- b) Short payment of service tax due to rate difference in case of cancellation.
- c) Penalty for late filing of ST 3 returns
- d) Non reversal of cenvat credit utilized for unsold flats after receipt of Building Use permission
- e) Short payment of service tax on security expenses.

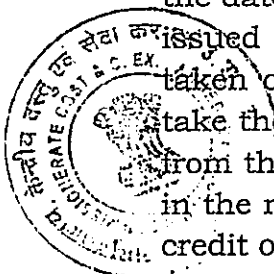
18. Before arriving at a conclusion, I would like to examine the merits of each of the issues individually.

a) Cenvat credit taken and utilized during October 2014 to June 2017 without documents and on ineligible documents/services.

19. The SCN proposed to disallow cenvat credit of Rs.62,87,558/- taken and utilized during the period Oct.2014 to June 2017 for various reasons. The said assessee have submitted invoice wise details along with photo copies of the said invoices. The original invoices/documents/ledger/bank statement have been called from the said assessee and verified. On verification the above details the following discrepancies have been noticed thereby they availed and utilised cenvat credit wrongly by the said assessee which is discussed as under:

20.1 Cenvat Credit of Rs.34807.00 availed after one year from the date of invoice.

20.1.1 On verification of the invoices/documents submitted by the aid assessee, it was found that Inv.No.IN/AHD/IND/201300901 was issued by M/s.SGS India P.Ltd on 13.09.2013 and credit of Rs.550.00 was taken by the assessee on 01.12.2014 and Invoice No.RI-28 DT.04.09.2015 issued by M/s.Supersil Architectural Products P.Ltd and cenvat credit of Rs.34257/- was taken on 28.06.2017 which are not allowed in view of Noti.No.21/2014-(CE) dated 11.07.2014. Vide above Notification, the provisions of cenvat Credit Rules, 2004 were amended whereby a manufacturer or a service provider shall not take cenvat credit of inputs, input services after a period of one year from the date of issue of invoice , bill or challan. In the instant case the invoice was issued on 13.09.2013 however the credit on the corresponding invoice was taken only on 01.12.20214 after one year. Hence the same is not eligible to take the cenvat credit of Rs.34807.00 as they availed the cenvat after one year from the date of issue of Invoice. The said assessee also agreed with the point in the reply to Show Cause Notice. In view of the above, I find that the canvat credit of Rs. 34807.00 is wrongly availed by the said assessee and therefore the



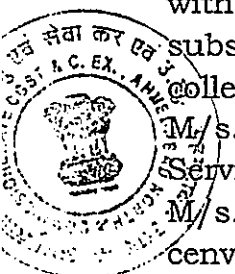
same is required to be reversed/recovered under Section 73(1) of Finance Act 1994 read with 15(4) of Cenvat Credit Rules, 1994. They are also liable to pay interest u/s.75 of Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules, 2004. As they have not disclosed the same in their ST 3 returns with the intention to suppress the factual position hence the said wrong availment attracts penal provisions under section 78(1) of Finance Act, 1994 read with provisions of Section 15(3) of Cenvat Credit Rules, 2004.

20.2 Wrong availment of Cenvat Credit of Swachh Bharat Cess to the tune of Rs.1,41,934.00.

20.2.1 On verification of the invoices and submissions, it was found that the said assessee have wrongly availed the cenvat credit of Rs.1,41,934.00 of Swachh Bharat Cess. Rule 3(1) of Cenvat Credit Rule specifies the duties/cesses on which cenvat credit is allowed. On perusal of Rule 3(1) of the said CCR, 2004, I find that Swachh Bharat Cess is not a specified duty/cess for the purpose of availment of cenvat credit. Hence, cenvat credit of Swachh Bharat Cess is not allowed either to a manufacturer or producer of final product or a provider of output service. The said assessee in their reply to SCN agreed that they have availed the cenvat credit of Swachh Bharat Cess is wrongly availed which was confirmed in their reply to SCN. In view of the above, I find that the said assessee wrongly availed cenvat credit of Rs.1,41,934.00 and accordingly it is to be recovered/reversed be recovered/reversed under Section 73(1) of Finance Act 1994 read with 15(4) of Cenvat Credit Rules, 1994 along with interest u/s.75 of Finance Act, 1994 read with Rule 14 of cenvat Credit Rules,2004. As the said cenvat credit availed with wrong intention and by suppressing the material facts hence attracts penalty provisions under section 78(1) of Finance Act, 1994 read with provisions of Section 15(3) of Cenvat Credit Rules, 2004.

20.2 wrong availment of cenvat credit of Rs.105699.00 on account of cenvat duty paid by M/s.Rajput Security & Investigation Services.

20.2.1 On verification of invoices and submissions made by the said assessee, it is found that they have availed cenvat credit of Rs.1,05,699.00 on security services provided by M/s.Rajput Seciry & Investigation Services. As per Notfn No 30/2012-ST dated 20.6.2012, as amended by Notfn No 45/2012-ST dated 7.8.2012 and as stipulated under Rule 2(1)(d) of the Rules the said assessee, being a corporate body is liable to pay 100%service tax on security services received by them under Reverse charge Mechanism. It is a statutory liability of the service receiver to pay service tax on the services covered under Reverse Charge Mechanism. Therefore it was the liability of the service receiver, M/s.Tirupati Surjan Ltd, to pay entire service tax liability and take the credit of such service tax paid if eligible. However herein this case the service provider M/s.Rajput Security & Investigation Services has charged service tax without any authority from the recipient i.e M/s.Tirupati Surjan Ltd and subsequently the recipient has availed the cenvat credit on the service charges collected by the service provider. As per the above legal provisions, M/s.Rajput Security & Investigation Services are not authorised to collect the Service Tax and therefore the cenvat credit taken by the service receiver i.e. M/s.Tirupati Surjan Ltd is not legal and tenable. In view of the above, the cenvat credit of Rs.1,05,699.00 wrongly availed by said assessee is requires to be recovered/reversed under Section 73(1) of Finance Act 1994 read with

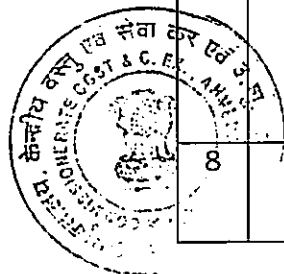


15(4) of Cenvat Credit Rules, 1994 along with interest u/s.75 of Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules,2004. As the said cenvat credit is intentionally availed and suppressed the material facts and therefore attracts penal provisions under section 78(1) of Finance Act, 1994 read with provisions of Section 15(3) of Cenvat Credit Rules, 2004.

20.3 Wrong avaiement of cenvat credit of Rs.6,56,330.00 taken and utilized without documents and on ineligible documents/invoices.

20.3.1 Rule 9 of Cenvat Credit Rules, 2004 provided the description of documents and accounts on which the service tax provider or manufacturer can take the cenvat credit. The said assessee has availed and utilized the cenvat credit of Rs.6,56,330.00 without any supporting documents as tabulated below.

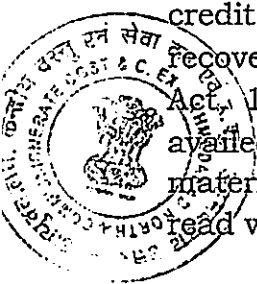
Sr No	Date/year	Name of the Service Provider of the assessee	Credit Amount	Remarks
1	2014-15	Credit Taken during the months of Nov-2014, Jan-2015 and March-2015 as per ST-3 return	71508	No supporting documents related to the said amount (as mentioned in service tax returns)are Provided
2	2015-16	Difference of credit as per ST-3 and Credit Register (Oct-2015)	11092	Credit Taken. 339992Credit as per Cenvat Register: 328900 Diff. :11092 No documentary evidence is available justifying the difference.
3	15/03/2016	Dhanvantri Landscaping & Gardening Services	8525	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Regno. of the service provider was not mentioned on the invoices)
4	2016-17	Difference of credit as Per st-3and Credit register (April-2016)	4365	Credit Taken:1397119Credit as per Cenvat Register: 1392754Diff.:4365 No documentary evidence is available justifying the difference.
5	17/10/2016	Sahajanand Colour Anodise (AAIHA 4900 M)	34567	Invoice/Bill could not be furnished by the assessee
6	17/10/2016	Sahajanand Colour Anodise (AAIHA 4900 M)	30471	Invoice/Bill could not be furnished by the assessee
7	2017-18	difference of credit as per ST-3 and Credit register (April-2017)	352564	Credit Taken:486167 Credit as per Cenvat Register: 133603 Diff.:352564No documentary evidence is available justifying the difference.
8	2017-18	difference of credit as per ST-3 and Credit register	8826	Credit Taken:186443Credit as per Cenvat Register: 177617 Diff.:8826No



		(April-2017)		documentary evidence is available justifying the difference.
9	2017-18	other credit taken in June-2017	76412	No documentary evidence is available
10	20/04/2017	Ashishteli	58000	Invoice/Bill could not be furnished by the assessee
11	01/02/2016	Poojaben Prakashkumar Meh ta	329311	Invoice/Bill could not be furnished by the assessee/multiple invoice
12	25/01/2016	Vistas Engineers Pvt. Ltd	31097	Proper Tax paying document in terms of Rule 9 of CCR, 2004 is not available (Service Tax Reg no. of the service provider was not mentioned on the invoices).
			1016738	

20.3.2 The said assessee have not produced any of the documents as detailed above under the provisions of the Rule 9 of Cenvat Credit Rules, 2004 but availed cenvat credit which is irregular and not in accordance with the provisions of Cenvat Credit Rules. The said assessee agreed with the allegation and accepted the fact that they do not have any documentary evidence for claiming/availing the above cenvat credit. In view of the above, the said wrongly availed cenvat credit of Rs.10,16,738/- is required to be recovered/reversed along with applicable interest under Section 75 of Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules, 2004. This could have been detected only during the course of audit. Therefore, I find that they have suppressed the material facts by wrongly availing the cenvat credit with an intent to evade the payment of service tax. Accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for recovery of service tax amounting to Rs.10,16,738/- as tabulated above. As they intentionally availed the cenvat credit without proper documents as mandated under Rule 9 of CCR, 2004, they have suppressed the material facts which attracts penalty provisions u/s.78 of Finance Act, 1994 read with provisions of Section 15(3) of Cenvat Credit Rules, 2004.

20.4 In view of the above facts and discussion, I find that out of the total cenvat credit of Rs.62,87,558/- availed by the said assessee, cenvat credit to the tune of Rs.12,99,178/- (Rs.34,807.00 + Rs.1,41,934.00 + Rs.1,05,699.00 + Rs.10,16,738.00) is wrongly availed by them with the intention of evade payment of service tax. The remaining amount of cenvat credit to the tune of Rs.49,88,380/- is allowable in view of Rule 3 of Cenvat Credit Rules, 2004. Therefore, I disallow the total wrongly availed Cenvat credit to the tune of Rs.12,99,178/- and the same is required to be recovered/reversed along with applicable interest under Section 75 of Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules, 2004. As they have availed the Cenvat credit wrongly as discussed above they have suppressed the material facts which attracts penalty provisions u/e.78 of Finance Act, 1994 read with provisions of Section 15(3) of Cenvat Credit Rules, 2004.



21. Short payment of service tax due to rate difference in case of

cancellation:

21.1 It has been alleged in the SCN that the assessee had discharged the service tax liability on the net member contribution collected during the period (amount collected during the year minus the amount refunded to the customer on booking cancellation during the period), as per the prevailing rate of service tax at the material time. This had resulted into adjustment of service tax calculated on the amount paid on cancelled booking at the rate of service tax prevailing on the date of cancellation.

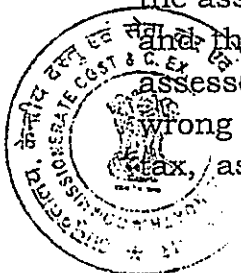
21.2. Rule 6(3) of the Rules reads as under:

“(3) Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract the assessee may take the credit of such excess service tax paid by him, if the assessee -
(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or
(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued”.

21.3 The adjustment is allowed only of the actual amount of service tax paid on the cancelled bookings at the rate of service tax prevailing at the time of booking and not at the rate of service tax prevailing at the time of cancellation. Accordingly., the assessee have wrongly made the adjustment and netted the cancellation amount with the booking amount received during the year. Hence the difference of rate of service tax prevailing at the time of cancellation and the rate of service tax prevailing at the time of booking is required to be recovered from the assessee. The details of short payment of service tax relating to rate difference is as under.

Period	Excess amount adjusted on account of rate difference in service tax (Rs)
2015-16	12963
2016-17	91340
2017-18 (upto June 2017)	15793
Total	120096

21.4 In their reply to the SCN, the said assessee agreed with the point and did not content the same. However, the said assessee have contravened the provisions of Rule 6(3) of the Rules as they have failed adjust the excess amount properly. Thus, the said assessee have wrongly adjusted the excess amount on account of rate difference in service tax knowingly and have short paid service tax. This could only have been detected during the course of audit hence I find that the said assessee deliberately adjusted the excess amount and they have suppressed the material facts with an intent to evade the payment of service tax. Accordingly, the proviso to Section 73(1) of the Finance Act, 1994 is applicable for invoking the extended period of 'five years' for recovery of service tax amounting to Rs 1,20,096/-, as tabulated above. I also find that as the assessee has wrongly adjusted the excess amount due to the rate difference and therefore, interest is also required to be charged and recovered from the assessee under the provisions of Section 75 of the Act. Further, by the act of wrong adjustment of excess amount on account of rate difference in service tax, as discussed above, they have suppressed the material facts with an



intention to evade the payment of service tax. Therefore the assessee is also liable for penal action under the provisions of Sections 78(1) of Finance Act,1994.

Penalty for late filing of ST 3 returns

22.1 Late fee of Rs.12,400/- has to be sought and charged from the said assessee under Rule 7 of C of Service Tax Rules,1994 on account of delayed filing of ST 3 returns. It has been submitted by the assessee that they agree with the point and do not contend the same. The details of late fee of filing ST 3 are as under :

Period of Return	Due date of return	Actual date of filing	Delay in filing	Penalty for Late-filing (Rs)
April-September,2015	25/10/2015	07/11/2015	13	500
October-March,2016	29/4/2016	10/5/2016	11	500
April-June,2017	15/8/2017	27/12/2017	134	11400
Total				12400

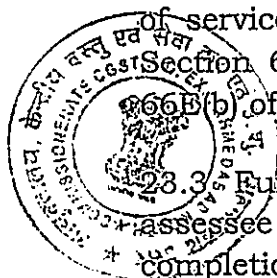
22.2 From the above details, I find that he said assessee have filed their ST 3 returns which were delayed beyond the prescribed due dates and therefore they are liable to pay Rs,12,400/- as late fee under provisions of Section 70(1) of the Finance Act read with provisions of Rule 7C of the Service Tax Rules, 1994 and the assessee have also agreed to pay the same in their reply to Show Cause Notice.

Non-reversal of cenvat Credit utilized for the unsold flats after receipt of Building Use permission ('BU')

23.1 It has been alleged in the Show Cause Notice that the said assessee wrongly availed Cenvat credit of Rs.9,99,074/- on input services and also have failed to reverse the proportionate cenvat credit, availed on the input services in respect of residential units not booked/sold before BU permission was received.

23.2 Herein this case, I find that the said assessee has developed a scheme named 'Tirupati Aakruti Greenz' having blocks from A to F and BU permission was granted on 22.04.2016. At the time of obtaining BU permission, certain residential units remained unsold in Blocks A and B and they are not liable to service tax as these residential units sold after the receipt of BU permission. After the completion certificate received, the residential units sold would be deemed to be sale of immovable property and not covered under the definition of service as per the definition of service provided under the provisions of Section 65B(44) of the Finance Act,1994 read with the provisions of Section 66B(b) of the Finance Act 1994.

23.3 Further, I find that, as there is no output service provided by the said assessee when they book/sell the residential units after the receipt of the completion certificate and therefore the said assessee is not entitled to take cenvat credit proportionate to the services utilized for construction of units which have been booked/sold after the receipt of the completion certificate under the provisions of the Cenvat rules. If any cenvat credit is availed by the



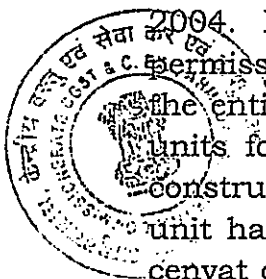
service provider after obtaining BU certificate the same is required to be reversed. However in the instant case the said assessee did not reverse the proportionate cenvat credit of Rs.9,99,074/-.

23.4 The eligibility and admissibility of Cenvat Credit flows from the authority of Cenvat Credit Rules 2004 wherein it was clearly specified the class of persons, who were entitled to cenvat credit as i) manufacturer or producer of final product and ii) output service provider. However, in the instant case certain residential units remained unsold after the completion certificate received, and the residential units sold would be deemed to be sale of immovable property and not covered under the definition of service as per the definition of service provided under the provisions of Section 65B(44) of the Finance Act,1994 read with the provisions of Section 66E(b) of the Finance Act,1994. From the above discussion, it is clear that the transfer/sale of residential unit after receipt of BU certificate is not covered under the definition of service. In view of the above, I find that the said assessee was not entitled to take cenvat credit to the services utilized for construction of units/flats which had not been sold prior to receiving BU certificate i.e units for which the assessee was not an output service provider.

23.5 In this connection, the said assessee submitted the following text of case laws of M/s.Alembic Ltd Vs Commissioner of C.Ex & ST Vadodara 1 of Hon"ble CESTAT 2018(28)GSTL 71 (Tri-Ahmd) and Hon"ble High court in the case of Principal Commissioner Vs alembic Ltd. reported 2019(29)GSTL 625 (Guj) wherein it was held that

" the Tribunal therefore on a harmonious reading of rule 3 of the rules read with Rules 6 and 11(4) of the rules held that eligibility/entitlement to credit has to be examined only at the time of receipt of input services and once it is found to be availed at a time when output when output service is wholly taxable, and the said credit is availed legitimately, the same cannot be denied and /or recovered unless specific machinery provisions are made in this regard. Sub Rule(7) of Rule 4 of the rules held that the assessee is not required to wait till output service is sold to the service recipient and the assessee can take the credit immediately after the day on bill/challan of output service is received. In facts of the case, there is no dispute that the respondent availed the credit after receipt of bill/challan in respect of input service and, therefore, it was legally entitled to take credit on the date after the receipt of service bills/challans"

23.6 On the basis of above submission of the said assessee claimed that as per Rule 4(7) of the CCR, the assessee is not required to wait till output service is sold to the service recipient and assessee can take the credit immediately after the day on bill/challan of out put services received. In the present case there was no dispute that they had availed the credit after receipt of the bill/challan in respect of out put service, therefore, they were legally entitled to take credit the date after the receipt of challan/bill and accordingly the availment of cenvat credit in accordance with Rule 4(7) of Cenvat Credit Rules, 2004. However the present issue is not taking cenvat credit after issue of BU permission but taking cenvat in respect of residential units in which for which the entire consideration has been received after issuance of BU permission i.e units for which the said assessee is not a provider of output service. The construction activity in respect of units where the entire consideration of the unit has been received after BU permission is not an output service and no cenvat credit is eligible for input service used thereof. Thus, the contention of the party is not relevant and accordingly not maintainable. Further the issues



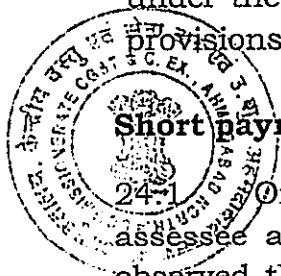
covered in the relied upon citation in the case of M/s.Alembic Ltd Vs Commissioner of C.Ex & ST Vadodara 1 of Hon"ble CESTAT 2018(28)GSTL 71 (Tri-Ahmd) and Hon"ble High court in the case of Principal Commissioner Vs alembic Ltd. reported 2019(29)GSTL 625 (Guj) have not reached its finality as Department has preferred appeal by way of SLP before Hon"ble supreme Court against the order of Hon"ble Gujarat High Court in the instant case. Further the said assessee has relied upon a large number of case laws and stated that the said case laws are squarely applicable in the present case. On going through the said case laws, I find that facts and circumstances of those cases are different and therefore, the said case laws are not maintainable.

23.7 The cenvat credit availed for the unsold residential units at the time of BU is required to be reversed as the said assessee is not eligible for cenvat credit as per the provisions of Section 65B(44) of the Act read with the provisions of Section 66E(b) of the Finance Act,1994. In view of the above facts, I find that the said assessee have contravened the provisions of Rule 3(l) of the Cenvat rules read with the provisions of rule 2(i) of the Cenvat rules as they have availed cenvat credit improperly and also failed to reverse the proportionate cenvat credit availed by them on the units sold after obtaining BU. I find that there is no output service provided by the assessee when they book/sell the residential Units after the receipt of the completion certificate. Therefore the said assessee would not be entitled to take cenvat credit proportionate to the services utilized for construction of units which have been booked/sold after the receipt of the completion certificate, under the provisions of Rule 2(l) of the Cenvat Rules. Accordingly they are required to reverse the wrongly availed cenvat credit of Rs.9,99,074/- as they have not proportionally reversed the same.

23.8 On perusal of above facts and finds, I find that the said assessee have suppressed the material facts with an intent to wrongly avail the cenvat credit. Accordingly, the proviso to Section 73(1) of the Finance Act,1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 the extended period of 'five years' for demand and recovery of cenvat credit of Rs 9,99,074/- is correctly invoked. As the assessee has not reversed the cenvat credit as discussed above and therefore, interest is required to be charged and recovered from the assessee under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules,1994. I further find that the act of not reversing the proportionate cenvat credit in contravention of the provisions of Rule 3(1) of the Cenvat Credit Rules, 1994 read with the provisions of Rule 2(l) of the Cenvat Credit Rules, 1994, the assessee has suppressed the material facts with an intention to avail cenvat credit wrongly and therefore, the assessee is also be liable for penal action under the provisions of Sections 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(3) of the Cenvat Credit Rules,2004.

Short payment of Service tax on Security Expenses

On reconciliation of the Security Service Expenses incurred by the said assessee as per their trial balance/ledgers vis-à-vis their ST-3 returns, it was observed that the said assessee had short paid service tax as a recipient of the services. It was informed by the said assessee that the difference was mainly on account of the invoices issued by M/s Rajput Security & Investigation Services and Others where the service provider had charged the Service Tax. It was seen that M/s Rajput Security & Investigation Services was a proprietary concern and



therefore, had no liability to pay service tax as they had provided services to the assessee which is a body corporate, in terms of the Notfn No 30/2012-ST dated 20.6.2012, as amended by Notfn No 45/2012-ST dated 7.8.2012. From the records, it is also noticed that in respect of other persons who had provided security service to them, they did not produce the proper document in terms of the provisions of Rule 9 of the Cenvat Credit Rules, 2004 to substantiate their contention. The details of the differential value and the service tax short paid has been tabulated as below:

(Rupees in actuals)

Period	Security Service expense as per Trial Balance	Amount on which Service tax paid under reverse charge mechanism as per their ST3 returns	Difference	Service Tax Payable
2015-16	537104	302204	234900	34060
2016-17	670187	256500	413687	62053
			Total	96113/-

24.2 In view of the provisions of Section 68(2) of the Act read with the provisions of Rule 2(1)(d)(F)(b) of the Rules and Notfn No 30/2012-ST dated 20.6.2012, as amended by Notfn No 45/2012-ST dated 7.8.2012, I find that the service recipient was liable to pay 100% of the service tax in respect of the security services. As they have not disclosed the department that they have received the services of security service provider and not shown in the ST-3 Returns. As the assessee has not paid the service tax as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Finance Act, 1994. The act of not disclosing the security services received by them and not paying the service tax on these services on recipient basis as discussed above, the assessee has suppressed the material facts with an intention to evade the payment of service tax, therefore, that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Finance Act, 1994.

APPLICABILITY OF EXTENDED PERIOD

25. With reference to the invocation of extended period, M/s. Tirupari Surgen, in their reply submitted that this has been a case of bona fide clerical belief of availing CENVAT Credit supported by legitimate challans for input services submitted. There has been no intention of fraud or collusion, there has been no suppression of facts more particularly when the assessee company is producing ledger accounts of Input Service Providers along with bank statements showing that payments to the Input Service Providers have been made through bank. It is, therefore, respectfully submitted that extended period for issuance of SCN is not applicable. In their submissions the said assessee referred various case laws against invoking of extended period, however, in view of the above facts and discussion, it is correctly invoked the extended period while issuing SCN. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.



“11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.

12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.

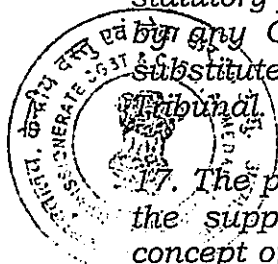
13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.



18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

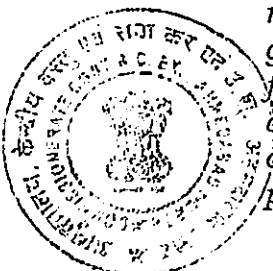
19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as



indicated in the proviso then the period of notice and a priori the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

In view of the above facts, I find that the extended period is correctly invoked while issuing this Show Cause Notice.

IMPOSITION OF PENALTY U/S.78 OF FINANCE ACT, 1994.

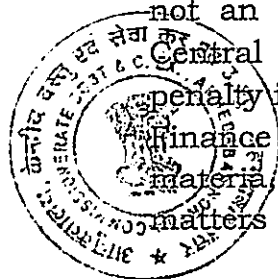
26. The said assessee in their reply submitted that for imposing penalty, there should be an intention to evade payment of service tax on the part of the assessee. The penal provisions are only a tool to safeguard against contravention of the rules. They submitted that they have always been and are still under the bonafide belief that they are eligible to avail and utilize the impugned CENVAT Credits.. Such bonafide belief was based on the grounds given above. There was no intention to evade payment of service tax as mentioned in the ground above. Therefore, no penalty is imposable in the present case. They also contended that penalty u/s. 78 of the Finance Act, 1994 is not leviable on them in view of various judgments referred by them in their submissions. On perusal of the referred case laws, I find that the matter involved in the case laws relied upon by them are not similar to the instant case and therefore are not providing any shelter from imposition of penalty u/s.78 of the Finance Act, 1994 in view of the fact that in spite of having knowledge of the various provisions of Service Tax, they have not paid the applicable Service Tax amount to the government at appropriate time with the intention to evade tax as discussed above.

27. 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".

28. 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.

29. In view of the above, I find that the said assessee have resorted to suppression of the material facts with the intent to evade service tax by way of



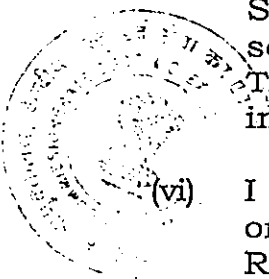
utilising ineligible cenvat credit. The said assessed wrongly availed cenvat credit of Rs.12,99,178/- and Rs.9,99,074/- (Total Rs.22,98,252/-) and therefore, I find that they have rendered themselves liable for penalty under section 78(1) of Finance Act, 1944 read with Rule 15 of cenvat Credit rules, 2004.

30. Further I also find that the said assessee failed to pay service tax of Rs.2,16,209/- (Rs.1,20,096/- + Rs.96,113/-) with the intention to evade payment of service tax hence this is a fit case to impose penalty u/s.78 of Finance Act,1994 and accordingly I hold that the said assessee is liable to pay penalty u/s.78 of Finance Act, 1994.

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

ORDER

- (i) I disallow the wrongly taken and utilised cenvat credit of Rs.12,99,178/- (Rupees Twelve Lac Ninety Nine Thousand One Hundred Seventy Eight) out of the total Rs.62,87,558/- originally demanded in the SCN and order recovery of the same under the proviso to Section 73(1) of the Finance Act, 1994 read with provisions of Rule 14(1)(ii) of Cenvat Credit Rules, 2004 by invoking extended period of limitation. I allow cenvat credit of remaining amount of Rs.49,88,380/- (Rs.62,87,558/- - Rs.12,99,178/-) as discussed above.
- (ii) I confirm the Service Tax amounting to Rs. 1,20,096/- (Rupees One Lakh Twenty Thousand Ninety Six only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act, 2017 as amended and order M/s. Tirupati Sarjan Limited, Ahmedabad to pay up the amount immediately.
- (iii) I confirm the late fee/penalty of Rs.12,400/- (Rupees Twelve Thousand Four Hundred only) under the provisions of section 70 of the Act read with provisions of Rule 7 of the Rules and order M/s. Tirupati Sarjan Limited, Ahmedabad to pay up the amount immediately.
- (iv) I disallow the wrongly taken and utilised cenvat credit of Rs.9,99,074/- (Rupees Nine Lac Ninety Nine Thousand and Seventy Four only) and order recovery of the same under the proviso to Section 73(1) of the Finance Act,1994 read with provisions of Rule 14(1)(ii) of Cenvat Credit Rules, 2004 by invoking extended period of limitation by invoking extended period of limitation and order M/s. Tirupati Sarjan Limited, Ahmedabad to reverse/pay up the wrongly availed and utilized cenvat credit immediately.
- (v) I confirm the Service Tax amounting to Rs. 96,113/- (Rupees Ninety Six Thousand One Hundred and Thirteen only) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act, 2017 as amended and order M/s. Tirupati Sarjan Limited, Ahmedabad to pay up the amount immediately.
- (vi) I order to charge and recover interest at appropriate rate on the on the confirmed service tax of Rs. 2,16,209/- (Rs.1,20,096/- + Rs.96,113/-) in terms of the provisions of Section 75 of chapter V of the Finance Act, 1994.



- (vii) I order to charge and recover interest at appropriate rate on the on the confirmed service tax of Rs. 22,98,252/-(Rs12,99,178/- + Rs.9,99,074/-) in terms of the provisions of Section 75 of chapter V of the Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules,2004.
- (viii) I impose a penalty of Rs. 2,16,209/-(Rupees Two Lakhs Sixteen Thousand Two Hundred Nine only) on M/s. Tirupati Sarjan Limited, Ahmedabad under section 78 of the Finance Act 1994 as amended.
- (ix) I impose a penalty of Rs. 22,98,252 /-(Rupees Two Two Lakhs Ninety Eight Thousand Two Hundred Fifty Two only) on M/s. Tirupati Sarjan Limited, Ahmedabad under Section 78 of the Finance Act 1994 as amended read with Rule 15 of Cenvat Credit Rules, 2004.
- (x) I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Tirupati Sarjan Limited, Ahmedabad pays the amount of Service Tax and interest as determined above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Tirupati Sarjan Limited, Ahmedabad 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.

31. The Show Cause Notice No. F.No.VI/1(B)/Tech-5/SCN/Tirupati/2020-21 dated 25.05.2020 issued to M/s. Tirupati Sarjan Limited, Ahmedabad is disposed off in the above manner.



(Maruf Tripathi)
Joint Commissioner,
CGST & Central Excise,
Ahmedabad North.

Dt. 30.07.2021

F.No.STC/15-17/OA/2020
By Registered Post AD
To
M/s Tirupati Sarjan Limited
103, Satyamev Complex, Opposite Gujarat High Court
Sarkhej-Gandhinagar Highway, Sola
Ahmedabad 380 060

Copy to:

- (1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
- (2) The Joint Director, DGGI, 6th & 7th Floor, I-the address, Opp.HCG Cancer Hospital, Nr.Sola Fly Over, Sola, Ahmedabad-380060.
- (3) The Assistant Commissioner, CGST & Central Excise, Division-S.G.Highway (vii) West, Ahmedabad North.
- (4) The Superintendent, Central GST & Central Excise, Range-III, Division-S.G.Highway West, Ahmedabad North.

(5) Guard File.

