


<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</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-105/OA/2020

आदेश की तारीख/Date of Order : - 11.11.221
जारी करने की तारीख/Date of Issue :- 16.11.2021

DIN NO: 20211164WT0000000C70

द्वारा पारित/Passed by:- आर गुलजार बेगम/ **R. GULZAR BEGUM**
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 19/JC/GB/2020-21

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 इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो 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. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

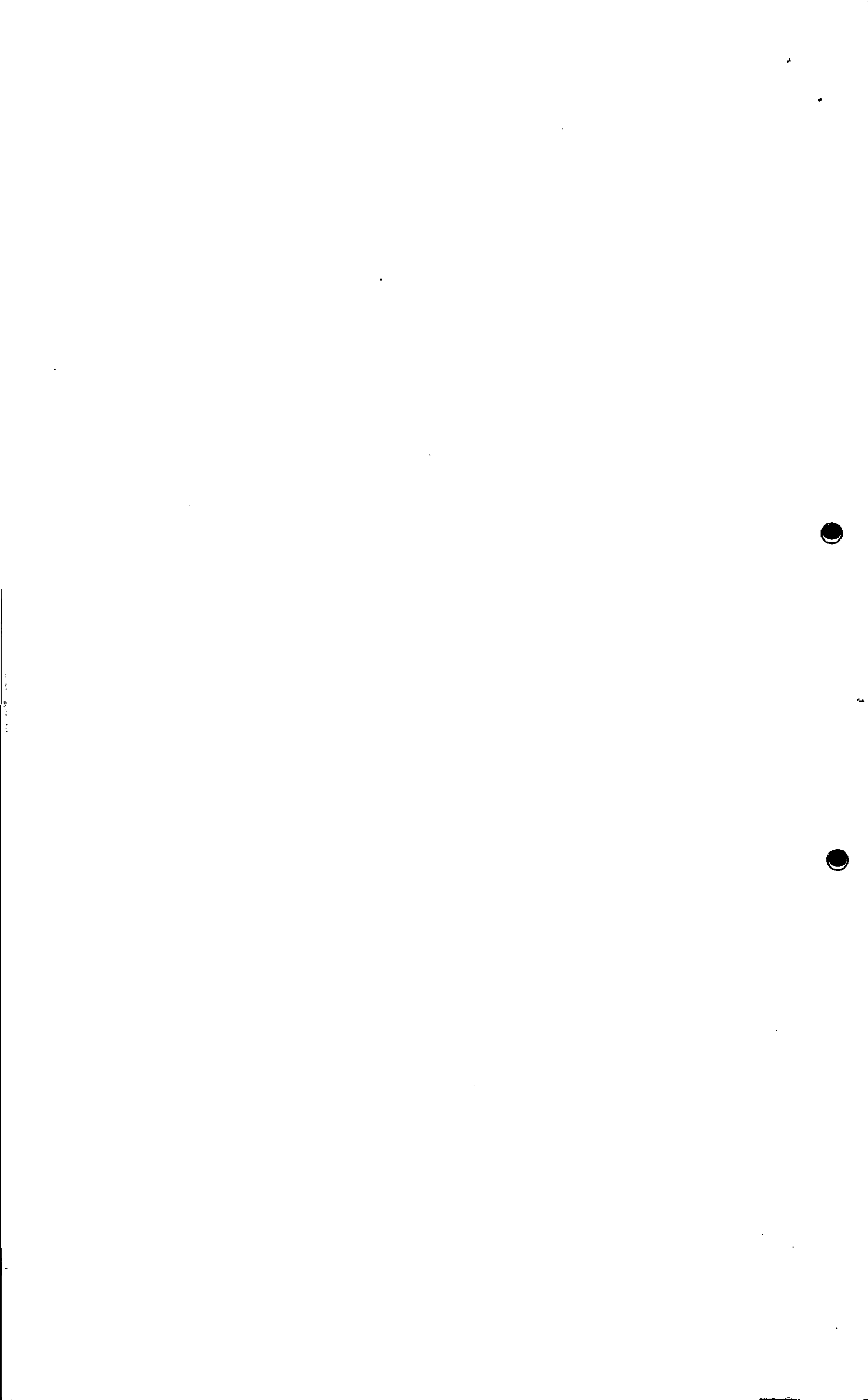
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (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) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice F. No. STC/15-105/OA/2020 dated 30.09.2020 issued to M/s. PARESHKUMAR RAMANLAL JANI (hereinafter referred to as "the said service provider") situated at "HOUSE M MONDEAL RETAIL PARK BETWEEN RAJPATH CLUB AND ISCON MALL S.G.ROAD AHMEDABAD GUJARAT



Brief Facts of the Case

M/s. PARESHKUMAR RAMANLAL JANI (hereinafter referred to as "the said service provider") situated at "HOUSE M MONDEAL RETAIL PARK BETWEEN RAJPATH CLUB AND ISCON MALL S.G.ROAD AHMEDABAD GUJARAT", having PAN No. AATPJ5350R being engaged in the business of providing services was found not registered with the Service Tax department.

2. Whereas, an analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 to 2016-17, and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

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

4. Therefore, a letter dated letter/e-mail dated 31.07.2020 and followed by reminder dated 24.09.2020 was written to the said Service Provider by the jurisdiction range office with a request to submit the documentary evidence in respect to their income within a week time from the date of receipt of above referred letter. However, the said Service Provider failed to submit the required details / documents or offer any explanation / clarification regarding income earned by them.

5. Since the said Service Provider had failed to submit the required details of services provided during the Financial Year 2014-15 to 2016-17, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

6. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the Financial Year 2014-15 to 2016-17. By considering the said amount as taxable income, and as the said Service Provider failed to submit the required details as per above referred letter, the service tax liability is calculated as under:-

Sr. No.	Financial Year	Sales/Gross Receipts from Services (ITR) (in Rs.)	Service Tax (in Rs.)
01	2014-15	16633876/-	2055947/-
02	2015-16	16169352/-	2255939/-
03	2016-17	19674920/-	2934797/-
	TOTAL	52478148/-	7246683/-

Therefore, the said service provider has not discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2014-15 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.7246683/-on the total value amounting to Rs.52478148/-along with applicable interest and penalty for the F.Y. 2014-15 to 2016-17.

7. Unquantified demand at the time of issuance of SCN

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that :

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

8. Further, the said service provider has also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y. 2014-15 to 2016-17 was not ascertainable at the time of issuance of Show Cause Notice, Consequently, if any other amount is disclosed by the Income tax Department or any other sources/agencies, against the said service provider, action will be initiated against the said service provider under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period F.Y. 2014-15 to 2015-16 covered under this Show Cause Notice, will be recoverable from the said service provider accordingly.

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

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

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

12. As per provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/ quarter immediately following the calendar month/ quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).

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

14. It is observed that the said Service Provider had neither obtained a Service Tax registration for the services provided by them for the period of F.Y. 2014-15 to F.Y. 2016-17, nor responded to correspondence made with them regarding actual services provided by them. concealed the value from the department, declared to the income tax department. Therefore, it appears that the said Service Provider had not paid correct service tax by way of willful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs. 7246683/- is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 78 of Finance Act, 1994.

15. Whereas, it is observed that the said service provider has neither submitted the documents nor extended the cooperation in the matter although sufficient time was provided. This act of non-cooperation of the said the said service provider has contravened the provisions of Section 72 of the Finance Act, 1994 and thus rendered themselves liable for penal action under Section 77 of Finance Act, 1994.

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

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

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

19. In view of above, it is observed that the said service provider have contravened the provisions of :

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

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

(c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

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

➤ Section 70 and Section 77 of the Finance Act, 1994 as amended in as much as they failed to correctly self assess the tax due on the services provided and have not filed the correct ST-3 return and contravened the provisions of Service Tax laws and did not comply to the letter issued by the Department and did not provide the required information/documents.

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

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

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

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

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

24. In view of discussion in the fore going paras, it is observed that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of said service provider that they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs. 7246683/- (Non-payment of Service Tax for the period 2014-15 to 2016-2017 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts

discussed in foregoing paras and material evidence available on record, it is observed that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs. 7246683/- (including applicable EC, SHEC, SBC & KKC) for the period F.Y. 2014-15 to 2016-17 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

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

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

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

28. Therefore, M/s. PARESHKUMAR RAMANLAL JANI, "HOUSE M MONDEAL RETAIL PARK BETWEEN RAJPATH CLUB AND ISCON MALL S.G.ROAD AHMEDABAD GUJARAT" vide the show cause Notice issued from F. No. STC/15-105/OA/2020 dated 30.09.2020 called upon to show cause to the **Additional Commissioner**, Central GST & Central Excise, Ahmedabad North, having office at 1st Floor, Custom House, Ashram Road, Navrangpura, Ahmedabad as to why:-

➤ The services rendered by them should not be considered as "taxable services" under Section 65 of the Finance Act, 1994, as amended, and the total/gross amount of **Rs.52478148** received towards rendering such services should not be considered as taxable value of the said taxable services charged by them for the F.Y. 2014-15 to 2016-17 ;

- Service Tax of Rs. 72,46,683/-(Seventy Two Lakh Forty Six Thousand Six Hundred Eighty Three) which was not paid for the F.Y.2014-15 to 2016-17 as per Table-A in para-11 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws(Relaxation of Certain Provisions) Ordinance, 2020(No. 2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit;
- Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act,1994 ;
- Prescribed late fee, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 ;
- penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for the failure to make payment of service tax payable by them within prescribed time-limit ;
- Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take Service Tax registration as per the provisions of Section 69 of the Finance Act, 1994;
- Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

29. The proceedings proposed and that may be taken against the said Service Provider, under the aforementioned provisions of the Finance Act, 1994 read with the Service Tax Rules, 1994 framed there under, are saved by the Section 174(3) of the CGST Act, 2017.

DEFENCE REPLY:

30. The assessee vide their letter dated 02.11.2020 forwarded their written submission along with copies of previous correspondence they had with the department. The assessee, in their reply, stated: that they are practicing as Advocate and entire receipt as shown in paragraph 6 of the SCN dated 30.09.2020 pertaining to FY 2014-15, 2015-16 & 2016-17 is towards providing Legal Services. Further they also submitted that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012, as amended from time to time, exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no 30/2012 dated 20.06.2012 as amended from time to time. Further, they submitted that they are not liable to pay Service Tax on the entire receipt and not obtained registration under the Service Tax. In the end, they requested to withdraw the Show Cause Notice dated 30.09.2020 and drop the proceedings.

31. PERSONAL HEARING:

31.1 The assessee was granted personal hearing on 24.09.2021 to present their case. Shri Rahul Y Oza, Chartered Accountant on behalf of the recipient of SCN appeared for hearing before me, and he reiterated the written submission made on dated 02.11.2020. Further, they requested time till 04.10.2021 to submit the reconciliation statement to prove that they are not liable to pay service tax demand. They requested to drop the proceedings initiated against them.

31.2 Further submission : Shri Pareshkumar Ramanlal Jani vide his letter dated 04.10.2021 furnished the list of Business Entities to whom the legal services were provided during the period from 2014-15 to 2016-17(as detailed in Annexure "A") to this order. Further they submitted that the Noticee is a practicing Advocates and the entire receipt for the year 2014-15 to 2016-17 is towards providing legal services and notice is not require to pay Service Tax.

32. DISCUSSION AND FINDINGS:

32.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 02.11.2020 and submission dated 04.10.2021 alongwith documents submitted by the assessee.

32.2 On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2014-15, 2015-16 & 2016-17 provided by the assessee. The difference in value of service to the extent of Rs. 5,24,78,148/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 5,24,78,148/- under proviso to section 73(1) of Finance Act, 1944 or not.

32.3 Thus, first and foremost I feel it necessary to understand the activities being carried out by the assessee. I find that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

32.4 I find that the assessee in his defence reply dated 02.11.2020 has stated that they are practicing as Advocate and entire receipt as shown in paragraph 6 of the SCN dated 30.09.2020 pertaining to FY 2014-15, 2015-16 & 2016-17 is towards providing Legal Services. Further they also submitted that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012, as amended from time to time, exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012, as amended from time to time. They have contended that the

services provided by them are covered under entry no. 6(b) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

32.5 In order to comprehend the actual nature of service, I would like to take support of the ITR, form 26AS and Audited balance sheet and profit and loss account for the FY 2014-15, 2015-16 & 2016-17 under Section 44AB of the Income Tax Act, 1961 certified by Shri Hemant Kajarekar, Chartered Accountant, Partner of Kajarekar & Co., Ahmedabad as required under Section 139(1) (a) of the Income Tax Act which have been submitted along with their aforementioned defence reply dated 02.11.2020. I would also like to discuss and reproduce the relevant excerpt of the documents.

32.6 I find that the Profit and Loss Accounts for FY 2014-15, 2015-16, 2016-17 and recognizes main Revenue as "Professional Receipts". The same is also reflected in their 26As for the year 2014-15 to 2016-17 under Section 194 J i.e. "Fees for Professional or technical services".

32.7 Further, I have also gone through the Additional Submission dated 04.10.2021, wherein the details of Profession Receipts from Legal Services have been provided for the year 2014-15 to 2016-17 as detailed below :

BREAK UP OF PROFESSIONAL RECEIPTS FROM LEGAL SERVICES :

Particulars	2014-15	2015-16	2016-17
Professional Receipts from Legal Services			
To Individuals	8165461/-	4043552/-	8087920/-
To Business Entities	8468415/-	12123500/-	1567000/-
Total of Receipt	16633876/-	16169352/-	19674920/-
As per audited Fin. Stat.	16633876/-	16169352/-	19674920/-

32.8 Hence, I find that the activities being carried out by the assessee for consideration are squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard. I also find that the income receipts for the disputed period are towards providing Legal Services.

32.09 Further as the assessee in his written submission stated that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012, as amended from time to time, exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. 11 of the notification no. 30/2012 dated 20.06.2012, as amended from time to time.

I hereby reproduce the notification for detail discussion;

Notification No. 25/2012-Service Tax

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- 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. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:—

6. Services provided by—

an arbitral tribunal to—

- (i) any person other than a business entity; or
- (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

an individual as an advocate or a partnership firm of advocates by way of legal services to,—

- (i) an advocate or partnership firm of advocates providing legal services;
- (ii) any person other than a business entity; or
- (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

a person represented on an arbitral tribunal to an arbitral tribunal;

7. [***]

32.10 I also produce relevant part of Notification No. 30/2012 dated 20.06.2012

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:—

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Sr. No.	Description of Services	Percentage of the Service Tax payable by the Service providing service	Percentage of the Service Tax payable by the person receiving the service
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	0	100

32.11 Further, I have carefully gone through the submission dated 04.10.2021, wherein the assessee furnished the amount of total services provided to Individuals and to business entities to whom the legal services were provided during the period from 2014-15 to 2016-17. I also find that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012 exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012.

32.12 Further, I have carefully gone through the submission dated 04.10.2021, wherein the assessee furnished the amount of total services provided to Individuals and to business entities to whom the legal services were provided during the period from 2014-15 to 2016-17. I also find that entry no. 6(b) of Notification Number 25/2012 dated 20.06.2012 exempts the Services provided by an individual as an Advocate or a partnership firm of advocates by way of legal services to certain entities and individuals. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012.

32.13 Now, I consider necessary to look into the definition of "Legal Services" provided under the Act as the assessee has claimed their service to be Legal Services. I find that the definition of "Legal Services" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at Entry No. 6(b), the same is reproduced for better comprehension:

Services provided by-

"(b) a partnership firm of advocates or an individual as an advocate or other than a senior advocate, by way of legal services to,- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity or (a) a business entity with a

turnover upto the preceding financial year;" Inserted vide Notification 9/2016-Service Tax

33. In view of the above facts and discussion, I am of the view that the service provided by the assessee is appropriately classifiable under the "Legal Service".

33.1 I find that the SCN shows the value of services to the tune of Rs. 5,24,78,148/- for FY 2014-15, 2015-16 and 2016-17 when value of sales/gross receipt as per ITR as mentioned in forgoing paras. Further para 6 of the SCN states that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the income Tax department or any other source/agencies, against the said assessee, action will be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. The assessee has declared service tax liability to be discharged under RCM only and no liability under forward charge has been declared.

33.2 As per ITRs filed by the assessee, Revenue from professional receipts for FY 2014-15, 2015-16 and 2016-17 looked are as under:

Revenue from Professional Receipts (Rs.)			
	FY 2014-15	FY 2015-16	FY 2016-17
Sale of Services	1,66,33,876	1,61,69,352	1,96,74,920

33.3 From the SCN, it is clear that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

33.4. I find that the Notification No. 25/2012 -ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of service tax on services rendered by them being Legal Service and has claimed the exemption from levy of service tax under Sr. No. 6(b) of Notification No. 25/2012-ST dated 20.06.2012. In all other cases, the entire liability to pay the Service Tax is on the recipient of service (under reverse charge mechanism) vide entry no. 5 of table at serial no. II of the notification no. 30/2012 dated 20.06.2012, as amended from time to time.

33.5 As discussed hereinabove, I find that the assessee is an advocate who is clearly engaged in business of providing Legal Service. I also find that the assessee is also registered under " BAR COUNCIL OF MAHARASHTRA".

33.6 Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the Sr.No. 6(b) of the Notification No. 25/2012-ST dated 20.06.2012 and Sr No. 5 of II of Notification No. 30/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the assessee as claimed by

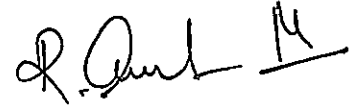
them. Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

34. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the value of service as discerned by the department by comparing the value of services in ITR/TDS is basically on account of the exempt service being the Legal Services rendered by the assessee as they are not liable to pay Service Tax on the entire receipt and not obtained registration under the Service Tax.

35. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to deal in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras. I pass the following order: -

ORDER

36 I drop the proceedings initiated against Shri Pareshkumar Ramanlal Jani, "HOUSE M MONDEAL RETAIL PARK BETWEEN RAJPATH CLUB AND ISCON MALL S.G.ROAD AHMEDABAD GUJARAT", having PAN No. AATPJ5350R, vide Show Cause Notice F.No. STC/15-105/OA/2020 dated 30.09.2020.



(R. Gulzar Begum)

Joint Commissioner

Central GST & Central Excise

Ahmedabad North

F.No. STC/15-105/OA/2020

Date: 11.11.2021

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

To,

M/s PARESHKUMAR RAMANLAL JANI
HOUSE M MONDEAL RETAIL PARK
BETWEEN RAJPATH CLUB AND ISCON MALL
S.G.ROAD AHMEDABAD GUJARAT

Copy to:

1. The Commissioner of CGST & C. Ex., Ahmedabad North.
2. The Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on www.its.
5. Guard File

