
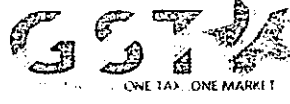


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- qaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220664WT000000C5A5

फा.सं./F.No. STC/15-191/OA/2021

आदेश की तारीख/Date of Order :- 08.06-2022

जारी करने की तारीख/Date of Issue :- 08.06-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R Gulzar Begum

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 22/ADC/ GB /2022-23

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।

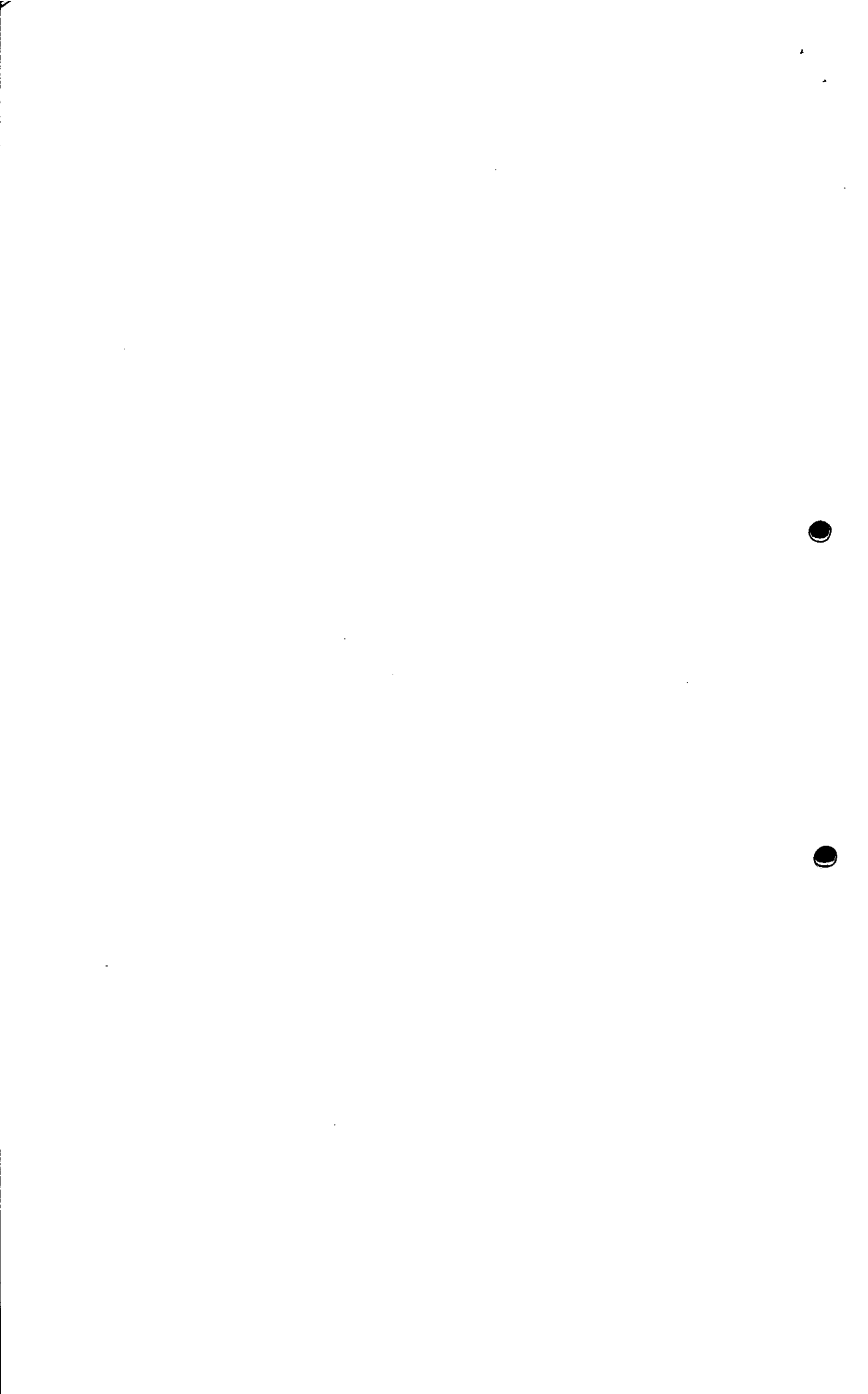
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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 Notices F.No.STC/15-191/OA/21-22 dated 23.04.2021 issued to M/s Rajubhai Angadbhai Rathod (HUF), Shop No. GF-12, Maurya Times Square, Science City Road, Sola, Ahmedabad-380013.



BRIEF FACTS OF THE CASE :

M/s. RAJUBHAI ANGADBHAI RATHOD (HUF), SHOP NO GF-12, MAURYA TIMES SQUARE, SCIENCE CITY ROAD, SOLA, AHMEDABAD, Gujarat-380013 (hereinafter referred to as "the said assessee" for the sake of brevity) are engaged in providing services and for the same was registered with Service Tax Department having Service Tax Registration No. AARHR0235HSD001.

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

3. As per the records available with this office, on going through the Third party Data received from CBDT of the said assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) are not tallied with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It appears that the said assessee have declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 are as under :

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
1.	2015-16	43990235	6137493
2.	2016-17	32625889	4866620
	TOTAL	76616124	11004114

Therefore, the said assessee has less discharged their Service Tax liability and thus is liable to pay Service tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs.11004114/- on the differential value amounting to Rs. 76616124/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

4. 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.

5. 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.

6. 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.

7. From the foregoing paras, it appears that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs. 11004114 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-s their ITR/Form 26AS, in such manner and within such period

prescribed in respect of taxable services received/provided by them with an intent to evade payment of service tax. Thus, it appears that the said assessee have failed to discharge the service tax liability of Rs. 11004114/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs. 76616124/- and therefore, service tax is required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

8. In view of above, it was observed that the said assessee 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.

9. It has been noticed that at no point of time, the said assessee has disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that has come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it was observed that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 11004114 /-. Thus, it was observed that there is a deliberate withholding of essential and material information from the department about service provided and value realized by them. It observed that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

10. As per Section 75 *ibid* every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appears that the said assessee has short paid/non-payment of Service Tax of 11004114/- on the actual value received towards taxable services provided which appears to be recoverable under proviso to Section 73(1) of the Finance Act alongwith interest under Section 75 *ibid* not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee has suppressed the facts to the department and contravened the provisions with an intent to evade payment of Service Tax. The said assessee has not discharged their Service tax liability and hence is liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax observed to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs. 11004114 /- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994

alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12. 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 assessee have contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee observed to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

13. Moreover, in addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appears that the said assessee 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.

14. Therefore, M/s. RAJUBHAI ANGADBHAI RATHOD (HUF), SHOP NO GF-12, MAURYA TIMES SQUARE, SCIENCE CITY ROAD, SOLA, AHMEDABAD, Gujarat-380013 are hereby called upon to show cause, as to why;

(i) Differential amount of Service Tax amounting to Rs.11004114/- (Rupees One Crore Ten Lakh Four Thousand One Hundred Fourteen only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.

(ii) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.

(iii) 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.

(iv) penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to assess the correct tax liability.

(vi) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of service tax.

DEFENCE REPLY :

15. The assessee vide letter dated 20.05.2021 and 20.05.2022 has furnished their written submission wherein they stated that they deny all the allegations and averments made against the Noticee Firm; that the Noticee Firm is a well-established, reputed and law abiding firm in existence since 2014 and engaged into Colour Painting Works Contract Services; that the firm is holding STC No. AARHR0235HSD001 and regularly paid Service-tax and filed Form ST-3 Return; that during the SCN period the firm has Total Turnover of Sales of FY 2015-16 Rs. 4,32,70,498/- on which VAT @0.6%Rs. 2,59,623/- & Service-tax Rs.20,66,836/- has paid that the firm has Total Turnover of Sales of FY 2016-17 Rs. 3,19,99,287/- on which VAT @0.6% Rs. 1,91,996/- & Service-tax Rs.16,55,754/- has paid; that the difference mentioned in SCN for FY 2015-16 and F.Y. 2016-17, are without reconciling / considering Factual Data as per ITR/Tax Audit Report and ST-3 Return Data; that there has be gross negligence in issuing the alleged SCN simply based on some records received from Income Tax Department and without actually verifying the available records or giving opportunity of being heard to the Noticee even without Pre-Consultation with Noticee; that without considering the factual details, the

department has raised the demand which is not justifiable at all ; that the notice submitted the actual reconciliation; that from reconciliation statement of FY 2015-16 and FY 2016-17,its established that Net Sales as per Books/ITR/VAT, Service-tax Returns and Form 26AS are reconciling there by leaving no space for any other income which is chargeable to service-tax; that department has not taken factual fact into account & raised the demand of service tax, which has not been demandable & justifiable; that the demand of service tax has to be quashed/dropped; that they attached copy of Order-In-Original Received from Assistant Commissioner, Central Excise & CGST, Division-VI, Ahmedabad North vide F.No. CGST-06/04-319/O&A/Gajanand/20-21/87 Dated 31/03/2022 received on 22/04/2022; that they prayed to Drop the entire demand of service tax of Rs.1,10,04,114/- and interest thereon, penalty u/s 76, 77 & 78 of Finance Act, 1994; that they attached previous Submission to SCN Reply Dated 20/05/2021, Copy of Reconciliation Statement of Value Difference in ITR/TDS & STR, Copy of Order-In-Original No. GST-06/D-VI/O&A/221/Gajanand/AM/2021-22 for the period of FY 2014-15 and FY 2015-16, Copy of Income-tax Return & Form No. 26AS, Copy of Audit Report alongwith Profit-Loss A/c and Balance Sheet, Copy of Service-tax Return in Form ST-3, Copy of VAT Annual Return (Form No 202) and VAT Audit Report (Form No. 217),Copy of Work Orders.

PERSONNEL HEARING :

16. Personnel hearing was granted to the assessee on 02.06.2022, wherein Shri Vijat V. Madat, Chartered Account and authorized representative appeared before me on behalf of the asseasee. He submitted written submission on 20.05.2022 and requested to consider the case on merits ;

DISCUSSIONS AND FINDINGS

17.1. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, Balance sheet for the year 2015-16 and 2016-17. In the present case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 1,10,04,114/- for the financial year 2015-16 & 2016-17 on the basis of data received from Income Tax authorities. I find that the Show cause Notice has been issued on the basis of difference between from 26As filed alongwith Income Tax returns and ST-3 filed by the assessee. I find that the assessee is registered under Service Tax. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 76, 77(1), 77(2) and 78 of the Finance Act, 1994. I find that the assessee is HUF and running the firm Gajanand Enterprises engaged in providing colour painting works contract Services.

17.2 I find that the difference in ITR/TDS/STR as shown in the show cause notice is arrived as detailed below as per the relied upon documents available in file i.e calculation sheet received from CBDT.

(Amount in Rs.)

Sr. No	Year	Value Declared in ITR/26AS	Value declared in ST-3	Difference value on which ST demanded	Service Tax
01	2015-16	43990235	0	43990235	6137493/-
02	2016-17	32625889	0	32625889	4866620/-
Total				76616124	11004114/-

17.3 The noticee further submitted that they have filed the Service Tax returns and the same has not been considered at the time of issuance of show cause notice.

17.4 Further, while going through the submission made by the noticee, I find that the Show Cause Notice for the period 2014-15 and 2015-16 has already been

issued by the Assistant Commissioner, Central Excise & CGST, division VI, Ahmedabad (North) which has been adjudicated vide OIO No. GST-06/D-VI/O&A/221/Gajanand/AM/2021-22 dated 31.03.22. **Therefore, I do not consider the demand for 2015-16 for adjudication as the same has already been adjudicated by the jurisdictional adjudicating authority.** I also find that the assessee has filed the ST-3 which has not been considered at the time of issuance of Show Cause Notice. Based on the data available in file and furnished by the assessee, I put herewith the reconciliation statement herein under;

(Rs. In actual)

Demand raised in the show cause Notice for the year 2016-17.	32625889	
Less : The ST-3 returns filed, the amount of which is prior to abatement and RCM which has not been reflected in the show cause Notice.	April-Sept16 :	13712188
	Octo-Mar-17	17969264
	Total	31681452
		31681452
Difference after considering ST-3		944437
Less : Exempted Service provided	226399	
Less : TDS deducted on advance by party in FY. 2016-17	617469	843868
Less : TDS on ST	215553	100569
Total difference after considering ST-3 and exempted service		(-) 114984

17.5 I find that the demand for the year 2015-16 has already been adjudicated as stated above and therefore, I do not consider the demand for the year 2015-16 for adjudication. With regard to the issuing the show cause Notice for the period 2016-17, the issuing authority has not considered the value declared in the Service Tax Returns and therefore, the value declared in 26AS has been considered total difference and accordingly duty has been demanded. Therefore, considering the above reconciliation for the year 2016-17, and value declared in ST-3 returns, there is no service tax is recoverable and therefore the demand raised for the year 2016-17 is required to be dropped.

17.6 The Balance sheet and profit and loss account of an assessee is vital statutory records. Similarly, ST-3 returns filed are also statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

17.7 In the instant SCN penalties under section 76 and 78 have been proposed. However, penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed simultaneously. The Finance Act, 2008 (18 of 2008) which came

into force from 10-5-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. It reads as under:

“Provided also that if the penalty is payable under this section, the provision of Section 76 shall not be attracted.”

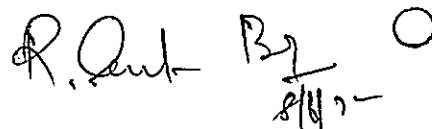
17.8 Keeping in view the aforementioned detailed discussions, I find that difference demanded in the show cause notice is due to the Service Tax returns filed by the assessee which has not been considered at the time of issuance of Show Cause Notice. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

17.9 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 difference demanded in the show cause notice is due to the Service Tax returns filed by the assessee which has not been considered at the time of issuance of Show Cause Notice.

18 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: -

O R D E R

19 I drop the demand of Rs. Rs. 11004114/- (Rs. 61,37,493/- for the year 2015-16 which has already been adjudicated by the jurisdiction office and Rs. 48,66,620/- as discussed hereinabove) and proceedings initiated against M/s RAJUBHAI ANGADBHAI RATHOD (HUF), SHOP NO GF-12, SHOP NO GF-12, MAURYA TIMES SQUARE, SCIENCE CITY ROAD, SOLA, AHMEDABAD, Gujarat- 380013 and accordingly Show Cause Notice F.No. STC/15-191/OA/2021-22 dated 23.04.2021 is hereby disposed off.


(R. Gulzar Begum)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
 - 2) The Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad North.
 - 3) The Superintendent, Central GST & Central Excise, Range-IV, Division-VI, Ahmedabad North
 - 4) The Superintendent Systems, CGST & CX, Ahmedabad North for uploading the order
- 5) Guard File.