



<p>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>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-49/OA/2021

DIN- 20221064WT000000D71B

आदेश की तारीख/Date of Order :- 20.10.2022

जारी करने की तारीख/Date of Issue :- 20.10.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 51/JC/ LD /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 -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 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 -४ (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।

(3) उक्त अपील की प्रति।

(4) 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 रू .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (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 F.No. STC/15-49/OA/2021 dated 23.04.2021 issued to M/s Ketan Suresh Kumar Desai, 104, Shreyas, Opp. Jain Temple, Navrangpura, Ahmedabad, Gujarat-380009.



BRIEF FACTS OF THE CASE:-

M/s. Ketan Sureshkumar Desai, 104, Shreyas, Opp. Jain Temple, Navarangpura, Ahmedabad, Gujarat-380009 (hereinafter referred to as the 'assessee') was registered under Service Tax having Registration No.AETPD8372DSD001 and was engaged in providing taxable services.

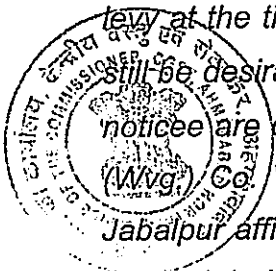
2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the assessee had declared less taxable value in their Service Tax Return (ST- 3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they had declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (In Rs.)	Gross Receipts Services (Value from ITR/26AS) (In Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0	50618932/-	50618932/-	7339745/-
2	2016-17	0	32654910/-	32654910/-	4898237/-
TOTAL					1,22,37,982/-

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg) Co. Vs. UOI, 1982 (010) 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



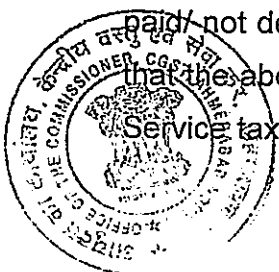
notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."

5. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider had not assessed the tax dues properly, on the services provided by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider had failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it appeared that the assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs. 1,22,37,982/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR / Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(l)(d) of Service Tax Rules, 1994.

8. It has been noticed that at no point of time, the assessee had disclosed 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 and 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 appeared that the said assessee had 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. 1,22,37,982/-. It appeared that the above act of omission on the part of the assessee resulted into nonpayment of Service tax on account of suppression of material facts and contravention of provisions



of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

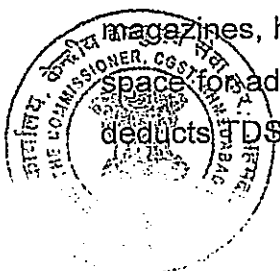
9. The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

10. Therefore, a Show Cause Notice bearing F.No.STC/15-49/OA/2021 dated 23.04.2021 was issued to M/s. Ketan Sureshkumar Desai, 104, Shreyas, Opp. Jain Temple, Navarangpura, Ahmedabad, Gujarat-380009 to show cause to the Additional/Joint Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House, Navrangpura, Ahmedabad as to why:

- (i) The demand for Service tax to the extent of Rs. 1,22,37,982/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY :-

11. In response to Show Cause Notice dated 23.04.2021, the assessee vide letter dated 05.05.2021 (received on 21.05.2021) submitted that they were into the business of selling of space or time slots for advertisements in print media i.e. newspaper, books, magazines, hoardings and advertisement via other media; that they were majorly selling space for advertisement in various print media specifically in newspaper and customer deducts TDS on such amount and the same was reflected in Form 26AS.



They further submitted that the figures mentioned in the show cause notice regarding the gross receipts were not correct. The correct details with respect to their turnover for the financial year 2015-16 and 2016-17 were as under :-

Financial year	Actual turnover as per audited financials	Gross receipts wrongly taken in the show cause notice
2015-16	3,74,88,851/-	5,06,18,932/-
2016-17	2,16,76,556/-	3,26,54,910/-

They requested for an opportunity of being heard in person before the case is adjudicated.

PERSONEL HEARING :-

12. Personal Hearing in this case has been granted to the assessee on 27.04.2022, 16.06.2022 and 04.08.2022. Shri Dhruvit Parikh, C.A. and authorised representative appeared for personnel hearing on 04.08.2022 on behalf of the assessee. He reiterated their written submission dated 21.05.2021. He further requested time till 22.08.2022 for submission of remaining documents and accordingly submitted the same.

DISCUSSION AND FINDINGS :-

13. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

14. I have carefully gone through the records of the case, SCN, defence reply as well as oral submissions made by the said assessee during the course of personal hearing. In the instant case, Show Cause Notices was issued to the assessee demanding Service Tax of Rs.1,22,37,982/- for the financial year 2015-16 & 2016-17 on the basis of Form 26AS/ITR data received from Income Tax authorities. On perusal of the above referred records, I find that the assessee is registered under Service Tax. The Show Cause Notice alleged non-payment/short payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77(2) & 78 of the Finance Act, 1994.

15. I find that that the said assessee in their reply to the show cause notice has submitted that they are into the business of selling of space or time slots for advertisements in print media i.e. newspaper, books, magazines, hoardings and advertisement via other media; that they were majorly selling space for advertisement in print media specifically in newspaper and customer deducts TDS on such



amount and the same was reflected in Form 26AS. Along with their reply, they have submitted the following documents :

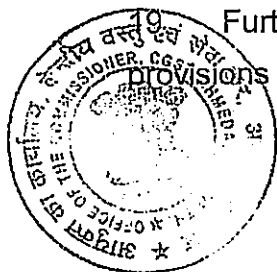
- (i) Statement showing service tax reconciliation with audited financial statements.
- (ii) Copies of P&L A/c for the period 2015-16 and 2016-17
- (iii) Statement showing working of service tax liability
- (iv) Form 26 AS for the period 2015-16 and 2016-17
- (v) Sample copies of Sales and purchase invoices.

16. I find that Shri Dhruvit Parikh, C.A. , authorised representative appeared for personnel hearing on 04.08.2022 on behalf of the assessee and reiterated their written submission dated 21.05.2021. He further requested time till 22.08.2022 for submission of remaining documents. Subsequently, the said assessee has submitted Cenvat register for the period 2015-16 and 2016-17. Apart from the cenvat register, they have not submitted any other supporting documents till date.

17. In the instant case, I find that the said assessee has stated that they are into business of selling of space or time slots for advertisements in print media. However, they have remained silent regarding filing of service tax returns and payment of service tax. I find that in spite of providing sufficient time, the said assessee has not provided any documents evidencing filing of service tax returns and payment of service tax by them. I further find that they have not submitted the audited balance sheets and income tax returns for the financial year 2015-16 and 2016-17. In fact, they have only submitted the pages of Profit and Loss A/c for the period 2015-16 and 2016-17. They have also failed to state the reasons for such difference between the figures shown in FORM 26AS and the figures shown in their STR filed, if any.

18. A taxable person is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider or that they have discharged the service tax liability. Even during the course of personnel hearing also the assessee failed to submit any documents proving that they are eligible for exemption from payment of service tax or abatement of value for the purpose of calculating service tax liability. In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may have lead to proof that the service provider is liable to pays service tax.

Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period.



20. In view of facts stated hereinabove, the value of services mentioned/declared in the ITR/Form 26AS for Financial Year 2015-16 and 2016-17, after considering the value shown in STR, is considered as taxable Value of Services provided and since the said assessee has not provided any details/data and the reasons for non-payment of service tax, therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the Value of Services declared/mentioned in the ITR/Form 26AS filed by the assessee has been considered for Non-Payment of Total Service Tax, which comes to Rs.1,22,37,982/- on differential value of Rs.8,32,73,842/- for Financial Year 2015-16 and 2016-17.

21. It is provided under Section 68 of the Finance Act, 1994 that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out above Table.

22. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services provided by him, as discussed above, as they failed to file ST-3 Returns and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994. From the foregoing paras and discussion made herein above, I find that the assessee has contravened the provisions of –

- (i) *Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the SCN period;*
- (ii) *Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the SCN period, to the credit of the Government account within the stipulated time limit;*
- (iii) *Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the SCN period.*

23. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the



information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposited on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax not paid by the assessee worked out in Tables supra for financial Year 2015-16 & 2016-17 is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

24. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assessee is liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

25. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. M/s.Ketan Sureshkumar Desai deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN that they were providing the service of selling of space or time slots for advertisements in print media. Moreover, the Hon'ble 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.

2. 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 thereunder, 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 Tribunal.

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.

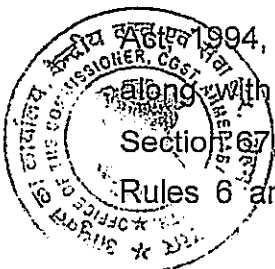
22. The Apex Court in the case of *Rajasthan Spinning and Weaving Mills (supra)* has held thus :

"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, the extended period is correctly invoked while issuing this Show Cause Notice.

26. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the assessee has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of assessee have



rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

27. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77 of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994

28. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intent to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided by them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. Hence it is found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act, 1994.

29. On perusal of para 4 & 5 of the SCN, I find 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 was to 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. I, however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income shown in 26AS. I therefore refrain from discussing the taxability on other income other than the income shown in 26AS.



30. In view of the above facts and findings, I pass the following order:-

ORDER

- (i) I confirm the demand of Service Tax of Rs.1,22,37,982/- (including cess) (Rupees One Crore Twenty Two Lakh Thirty Seven Thousand Nine Hundred Eighty Two Only), which was not paid/short paid during the Financial Years 2015-16 & 2016-17 as per Table supra and order to recover from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
- (ii) I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs.10,000/- on M/s. Ketan Sureshkumar Desai under Section 77(2) of the Finance Act, 1994
- (iv) I impose Penalty of Rs.1,22,37,982/- (including cess) (Rupees One Crore Twenty Two Lakh Thirty Seven Thousand Nine Hundred Eighty Two Only) under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Ketan Sureshkumar Desai pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Ketan Sureshkumar Desai 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. Accordingly the Show Cause Notice bearing F.No. STC/15-49/OA/2021 dated 23.04.2021 is disposed off.



(Signature)
20/10/2022
(Lokesh Damor)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

By RPAD
F.No. STC/15-49/OA/2021

Dt.:- 20 .10.2022

To,
M/s. Ketan Sureshkumar Desai,
104, Shreyas, Opp. Jain Temple,
Navarangpura,
Ahmedabad,
Gujarat-380009.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-VII Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central GST & Central Excise, Ahmedabad North
4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
- ✓ 5. Guard File.

