


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>3374</p> <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20221064WT000000F2DF

फा.सं./F.No. STC/15-66/OA/2020

आदेश की तारीख/Date of Order :- 31.10.2022

जारी करने की तारीख/Date of Issue :- 31.10.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 54-55/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 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 -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।

(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 -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 vide Show Cause Notice F.No. STC/15-66/OA/2020 dated 29.09.2020 and F.No. STC/15-136/OA/2021 dated 23.04.2021 issued to M/s Dhayan Fetting Contractor, Nilay Complex, 09/c, Tulsi Park Chs Ltd., Nr. Sun Star Apartment, Sola Road, Ahmedabad Gujarat.





**BRIEF FACTS OF THE CASE**

M/s. Dhayan Fetting Contractor, Nilay Complex, 09/C Tulsi Park CHS. Ltd, Nr. Sun Star Apartment, Sola Road Ahmedabad Gujarat (hereinafter referred to as the said assessee) is holding Service Tax registration No.- AHPPP8289ESD001

2. On going through the Third Party CBDT data for the Financial Year 2014-15 and 2016-17, it was observed that the said assessee had shown less amount of the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed with Service Tax Department than the 'Sales/Gross Receipts from Services (Value from ITR)', the 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' filed with the Income Tax Department. Therefore, it appeared that the said assessee had mis-declared / suppressed the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed by them and consequently short paid / not paid the applicable Service Tax on whole amount of services provided by them. As per the details shared with the CBIC, is as under-

**Table-I**

(Amt. in Rs.)

F. Y.	Value of Services declared in ITR	Value of Total Amount paid/Credited Under 194C, 194H, 194I, 194J'	Value of Services provided as per Service Tax Returns	Highest Difference	Service Tax (Including Cess)
2014-15	22997912	229979	5169192	17828720	2203630
2016-17	46538685	46342113	25807192	20731493	3006066
Total	6,95,36,597	4,65,72,092	3,09,76,384	3,85,60,213	52,09,696

3 To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns, letters dated 09.02.2018, 25.06.2019 and 17.07.2020 were issued to the said assessee. However, the said assessee neither submitted any details / documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard.

4. In view of facts stated hereinabove, that the Total Value of Services declared in ITR filed by the said assessee for Financial Year 2014-15 and 2016-17 was Rs.6,95,36,597/- and that the Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' for Financial Year 2014-15 and 2016-17 was Rs.4,65,72,092/- and whereas the total Value of Services provided as per Service Tax Returns was Rs.3,09,76,384/-. Since the said assessee has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns and (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference of Rs.3,85,60,213/- between these two was considered and the highest applicable rate was applied for Non-Payment/Short-Payment of Service Tax of Rs.52,09,696/- (Including Cess) for Financial Year 2014-15 and 2016-17 was worked out.



5. 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 notice had not paid service tax as worked out as above in Table-I.

6. 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 has not assessed the tax dues properly, on the services received 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.

7. 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 were liable to pay the said amount along with interest. Thus, the said Service Tax was required to be recovered from the said assessee along with interest under Section 75 of the Finance Act, 1994.

8. From the foregoing paras and discussion made herein above, it appeared that the said assessee had contravened the provisions of -

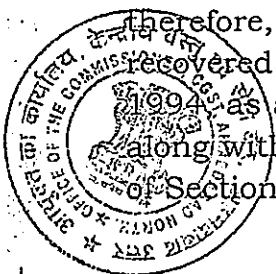
(i) Section 67 of the Finance Act, 1994 in as much as they had failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2014-15;

(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 period 2014-15, 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 period 2014-15.

(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

9. 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 the said assessee had 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 was 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 the said assessee appeared to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

10. It has been noticed that at no point of time, the said 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 2014-2015 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 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.52,09,696/- (including Cess). It appeared that the above act of omission on the part of the assessee resulted into non-payment 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, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994.

11. Therefore a Show Cause Notice bearing F.No.STC/15-66/OA/2020 dated 29.09.2020 was issued to M/s.Dhayan Fetting Contractor calling upon to show cause as to why:-

- (i) The said differential amount should not be considered as taxable value and the Service tax involved in the said amount to the extent of Rs.52,09,696/- (Including Cess) (Rupees Fifty Two Lakh Nine Thousand Six Hundred Ninety Six only) short paid /not paid by them, should not be 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 should not be imposed upon them under the provisions of Section 77(1) 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.
- (v) 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.



- (vi) Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.

12. Further on going through the Third Party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the said assessee had shown less taxable value in their ST Return for FY 2015-16 & 2016-17 as compared to the service related taxable value they have declared in their ITR/Form 26AS the details of which are as under:-

(Amt. in Rs.)

Sr. No.	F. Y.	Taxable Value as per ST 3 Returns	Gross receipts from services(Value from ITR/26AS)	Difference between Value of services from ITR/26AS and Gross Value in Service Tax provided	Resultant Service Tax short paid
1	2015-16	0	36604979	36604979	5307722
2	2016-17	0	46342113	46342113	6951317
	Total	0			1,22,59,039

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.

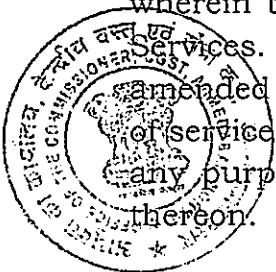
13. Therefore another Show Cause Notice bearing F.No.STC/15-136/OA/2021 dated 23.04.2021 was issued to M/s.Dhayan Fettling Contractor calling upon to show cause as to why:-

- (i) The demand of service tax to the extent of Rs.1,22,59,039/- short paid /not paid by them in FY 2015-16 & 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.

14. As both the SCNs are based on third party data received from Income Tax Department and also issued to the same assessee holding ST Registration No.AHPPP8289ESD001 and service tax demand for Financial Year 2016-17 is reflected in both the SCNs, I proceed to adjudicate both the SCNs together.

#### DEFENCE REPLY

15. The said assessee vide letter dated 15.05.2021 filed their reply to SCN wherein they stated that they are engaged in Man Power Recruitment Agency Services. As per Notification No.30/2012-Service Tax dated 20.06.2012 as amended by Notification No.7/2015 -Service Tax dated 01.05.2015, in respect of services provided or agreed to be provided by way of supply of man power for any purpose, the person who received the service is liable to pay service tax thereon. The person who provides the service is not liable to pay service tax at



all. Since their services are covered by the above Notification, they were not liable to pay service tax on supply made by them during the FY 2015-16 & 2016-17. Hence the demand of service tax should not be confirmed and recovered from them under the provisions of Section 73 of Finance Act, 1994. Since no service tax was payable by them no interest and penalty under section 75 and 78 of Finance Act, 1994 should be recovered from them. Since they had assessed the correct service tax liability and filed correct Service Tax returns, no penalty under section 77(2) of the Finance Act, 1994 should not be imposed upon them. Other than this reply no details such as audited balance sheet, copies of ST 3 Returns, Form 26AS, IT Returns, ledgers, agreement/contract/copies of invoices etc. were submitted by the said assessee.

### **PERSONAL HEARING**

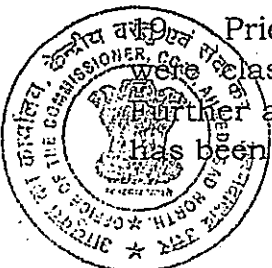
16. Personnel Hearing has been granted to the assessee on 31.01.2022, 14.02.2022, 19.04.2022, 12.05.2022, 09.06.2022, 19.07.2022, 10.08.2022, 26.08.2022, 21.09.2022 and 18.10.2022. However neither the assessee nor the authorised representative attended the personnel hearing. The delivery of the P.H. Notices have been confirmed from the speed post tracking system of the Postal department according to which the letter granting P.H. for 26.08.2022 has been delivered on 20.08.2022 vide ID EG110449352 IN., P.H. for 21.09.2022 has been delivered on 17.09.2022 vide ID EG193004668 IN and P.H. for 18.10.2022 has been delivered on 15.10.2022 vide ID EG222666958. In spite of number of opportunities granted for P.H, the said assessee failed to appear for P.H. Hence I proceed to adjudicate the instant SCNs ex-parte on the basis of reply filed by the assessee and other records available on file.

### **DISCUSSION AND FINDINGS**

17. 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.

18. I have carefully gone through SCNs, reply to the show cause notices, for the year 2014-15, 2015-16 and 2016-17. In the instant case, 2 Show Cause Notices were issued to the assessee demanding Service Tax of Rs. 52,09,696/- and Rs.1,22,59,039/- (Total of Rs.1,74,68,735/-) for the financial year 2014-15, 2015-16 & 2016-17 on the basis of difference of value ITR/P&L/STR/26AS account received from Income Tax authorities. On perusal of the above referred records, I find that the assessee is registered with Service Tax and holding registration No.AHPPP8289ESD001. The Show Cause Notices alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. On perusal of the reply to SCN, I find that the assessee is engaged in providing Man Power Supply. Now I would like to go through the legal provisions of taxability of the services provided by the assessee.

Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified and defined according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:



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

- (a) an activity which constitutes merely,—
  - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
  - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or
  - (iii) a transaction in money or actionable claim.
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.
- (c) fees taken in any court or tribunal established under any law for the time being in force.

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service. Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 1994 as under:

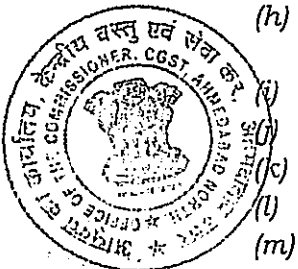
(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

*Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"*

20. According to which service tax is levied on all services other than those specified in negative list (Section 66D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (a) Service by the Government/Local Authority
- (b) Service by RBI
- (c) Service by Foreign Diplomatic Mission located in India
- (d) Service in relation to agriculture
- (e) Trading of goods
- (f) Manufacture of goods
- (g) Selling of space/time for advertisement
- (h) Services by access to road or bridge on a payment of Toll charges
- (i) Betting, gambling or lottery
- (j) Admission to Entertainment Events & Amusement Facilities
- (k) Transmission or distribution of electricity
- (l) Educational Services
- (m) Renting of Residential dwelling for use as residence





- (n) Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency
- (o) Transportation of Passenger with or without accompanied belongings
- (p) Transportation of goods.
- (q) Mortuary/ Funeral services

21. Thus 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 said assessee in their reply to SCN are not contending the taxable nature of service provided by them however they are contending that the services provided by them are covered under Noti.No.30/2012-service tax dated 20.06.2012 as amended vide Noti.No.07/2015 dated 01.05.2015 in respect of services provided or agreed to be provided by way of supply of man power for any purpose, the person who received the service is liable to pay service tax thereon. The person who provides the service is not liable to pay service tax at all. Since their services are covered by the above Notification, they are not liable to pay service tax on Man Power Supply made by them during the FY 2015-16 & 2016-17.

22. I have gone through the case records and find that the said assessee has filed only two page reply to SCN wherein it was claimed that they are providing services of Man Power Supply and therefore not liable to pay service tax as the receipt of service is liable to pay service tax under Noti.No.30/2012-service tax dated 20.06.2012 as amended vide Noti.No.07/2015 dated 01.05.2015. The relevant portion of Noti.No.30/2012-service tax is as under:

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

**I. The taxable services,-**

(A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii)

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or **supply of manpower for any purpose** or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory **to a business entity registered as body corporate, located in the taxable territory;**

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;



(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:-

Table

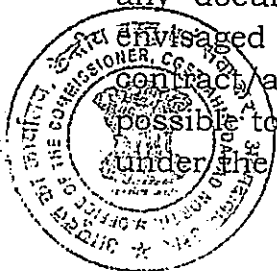
Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %

*Explanation-I.* - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

*Explanation-II.* - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

23. From the above, I find that as per Noti.No.30/2012-ST dated 20.06.2012 vide Sr.No.8 Service Tax shall be payable in respect of service provided or agreed to be provided in the case of supply of manpower service by service provider to the extent of service tax on 25% of value of taxable service and balance service tax on 75% of value of taxable service to be paid by the person receiving the service under partial reverse charge mechanism, if service are provided by any individual/HUF/proprietary concern/partnership firm to the business entity registered as Body corporate during the F.Y.2014-15. Subsequently the said Noti. No. 30/2012-ST dated 20.06.2012 was amended vide Noti.07/2015 dated 01.03.2015 according to which if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate, entire (100%) service Tax is payable by service receiver with effect from 01.04.2015.

24. On perusal of the above Notification No.30/2012 dated 20.06.2012 and No.07/205 dated 01.03.2015, I find that if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate the liability to pay service tax on the service provider is 25% for the FY 2014-15 and no liability is on the service provider for the F.Y.2015-16 & 2016-17. In the instant case, the said assessee in their reply to SCNs claimed that they are covered under the Notification No.30/2012 dated 20.06.2012 and Notification No.07/2015 dated 01.03.2015, however they have not produced any document like audited balance sheet, ITR, 26AS, Service Tax Return, copy of any ledger account, any agreement between the service receiver and assessee, any invoice, any proof of financial transaction, any document to prove that the service receiver is a corporate entity as envisaged in the Noti No.30/2012 dated 20.06.2012. In the absence of the contract/agreement/document/other financial records as required, it is not possible to accept the claim of the assessee that they are entitled for the benefit under the above said Notifications. The onus is on the assessee to prove that



the service receiver is a corporate body as defined under the said Notification and accordingly the assessee is not liable to pay any service tax but the service receiver is the person liable for payment of service tax. It is also noticed that a number of opportunities have been given to the assessee to produce/present supporting documents to substantiate his claim that they are not liable to pay any service tax. The assessee was registered with the Service tax Department and also aware that they have to file periodical ST 3 Returns until they surrender their Registration.

25. A taxable person is required to provide information/documents to the department as and when required. However, in this case the said assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to pay service tax being the service tax provider. 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 lead to proof that the service provider is liable to pay service tax. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax. Accordingly the said assessee is liable to pay service tax on the services provided by them to various service receivers for the FY 2014-15, 2015-16 & 2016-17.

26. In the instant case, I find that Show Cause Notices dated 29.09.2020 was issued to recover service tax for FY 2014-15 & 2016-17 and another Show Cause Notice dated 23.04.2021 was issued to recover service tax for F.Y.2015-16 and 2016-17 and therefore for the sake of clarity, I reconcile the details of service tax payable by the assessee as under:

Sl.No.	Description	2014-15	2015-16	2016-17
01	Value declared in ITR/26AS	22997912	36604979	46538685
02	Value of services as per STR	5169192	0	25807192
03	Difference	17828720	36604979	20731493
04	Service Tax	2203630	5307722	3006066
	Total Service Tax	1,05,17,418		

27. In view of the above discussion and on perusal of both the SCNs and reply filed by the said assessee I find that the service tax demand of Rs.1,05,17,418/- for the period 2014-15, 2015-16 & 2016-17 as reconciled above is sustainable and therefore the same is liable to be recovered from the assessee. I further find that service tax has been demanded for the FY 2016-17 in both the Show Cause Notices. While issuing the SCN dated 29.09.2020, the value of services of Rs.2,58,07,192/- declared in their ST 3 for the period 2016-17 has been considered however the same has not been considered while issuing the Show Cause Notice dated 23.04.2021 for the FY 2016-17. Therefore I consider the value of services of Rs.2,58,07,192/- declared in their ST 3 for the F.Y 2016-17 from their total value of services and accordingly the demand for the FY has been reduced to that extent. In view of the above facts, out of the total service tax of Rs.1,74,68,735/- (Rs.52,09,696/- + Rs.1,22,59,039/-), demanded through both the SCNs, demand of Rs.69,51,317/- (Rs.1,74,68,735/- - Rs.1,05,17,418/-) is required to be dropped to avoid overlapping of demand.



28. 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 in para supra.

29. 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 -

- 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;
- 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;
- 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.
- Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.

30. 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 amounting to Rs.1,05,17,418/- for financial Year F.Y.,2014-15, 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.

31. 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.

32. 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 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. It, thus, 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.

33. 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 behavior. The said assessee 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 came to light. The said assessee himself admits in their reply to SCN that they are providing various services.

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. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of *UO Vs Dharmendra Textile Processors -2008 (231)ELT 3(SC)* and further clarification in the case of *M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C)* wherein, it was, inter alia held that:

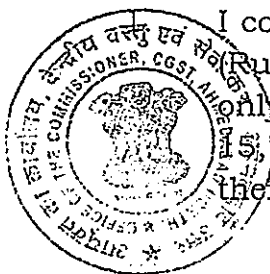
*"23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides".* With the above observation, the Hon'ble Apex court held that mens rea is not an essential ingredient to impose penalty under Section 11AC of the Central Excise Act, 1944 and there is no discretion available on quantum of penalty imposable under that section. As penal provisions of Section 78 of the Finance Act, 1944 and Section 11 AC of Central Excise Act, 1944 are pari materia, the ratio of decision of the Apex court is applicable to Service Tax matters also.

35. On perusal of relevant paras 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. Since the assessee has not provided any details/information/documents for the FY 2017-18 (upto June 2017) and the department has not also adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering into the said period to determine the liability as otherwise of assessee for service tax.


36. In view of the above facts and findings, I pass the following order.

**ORDER**

I confirm the demand of Service Tax of Rs.1,05,17,418/- (including cess) (Rupees One Crore Five Lac Seventeen Thousand Four Hundred Eighteen only), which was not paid/short paid during the Financial Years 2014-15, 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;



2. I drop demand of Rs.69,51,317/- (Rupees Sixty Nine Lac Fifty One Thousand Three Hundred Seventeen only) as discussed above in Para 27.
  3. 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 (1) above under Section 75 of the Finance Act, 1994;
  4. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Dhayan Fettling Contractor under Section 77(1) of the Finance Act, 1994.
  5. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Dhayan Fettling Contractor under Section 77(2) of the Finance Act, 1994.
  6. I impose penalty of Rs.20,000/- (Rupees Twenty Thousand only) on M/s. Dhayan Fettling Contractor under provisions of Rule 7 C of Service Tax Rules, 1994 for late filing of ST 3 Return for the period April 2014 to Sept.2014.
  7. I impose Penalty of Rs.1,05,17,418/- (including cess) (Rupees One Crore Five Lac Seventeen Thousand Four Hundred Eighteen 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. Dhayan Fettling Contractor pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon as mentioned at (3) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Dhayan Fettling Contractor 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.
37. Accordingly the Show Cause Notices bearing F.No. STC/15-66/OA/2020 dated 29.09.2020 and F.No. STC/15-136/OA/2021 dated 23.04.2021 is disposed off.

  
 (LOKESH DAMOR)  
 Joint Commissioner  
 Central GST & Central Excise  
 Ahmedabad North

BY RPAD  
 F.No. STC/15-66/OA/2020

Dt. 31.10.2022

To  
 M/s.Dhayan Fettling Contractor,  
 Nilay Complex, 09/C, Tulsi Park CHS. Ltd,  
 Nr. Sun Star Apartment,  
 Sola Road, Ahmedabad Gujarat



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-II, 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.

