


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST CENTRAL GST & CENTRAL EXCISE</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:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20220364WT00009479DD

फा.सं./F.No. STC/15-174/OA/2020

आदेश की तारीख/Date of Order :- 02-03-2022

जारी करने की तारीख/Date of Issue :- 02-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 67/ADC/ GB /2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -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।

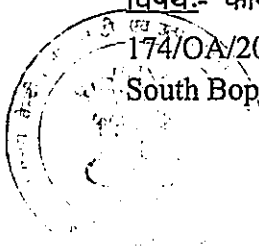
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

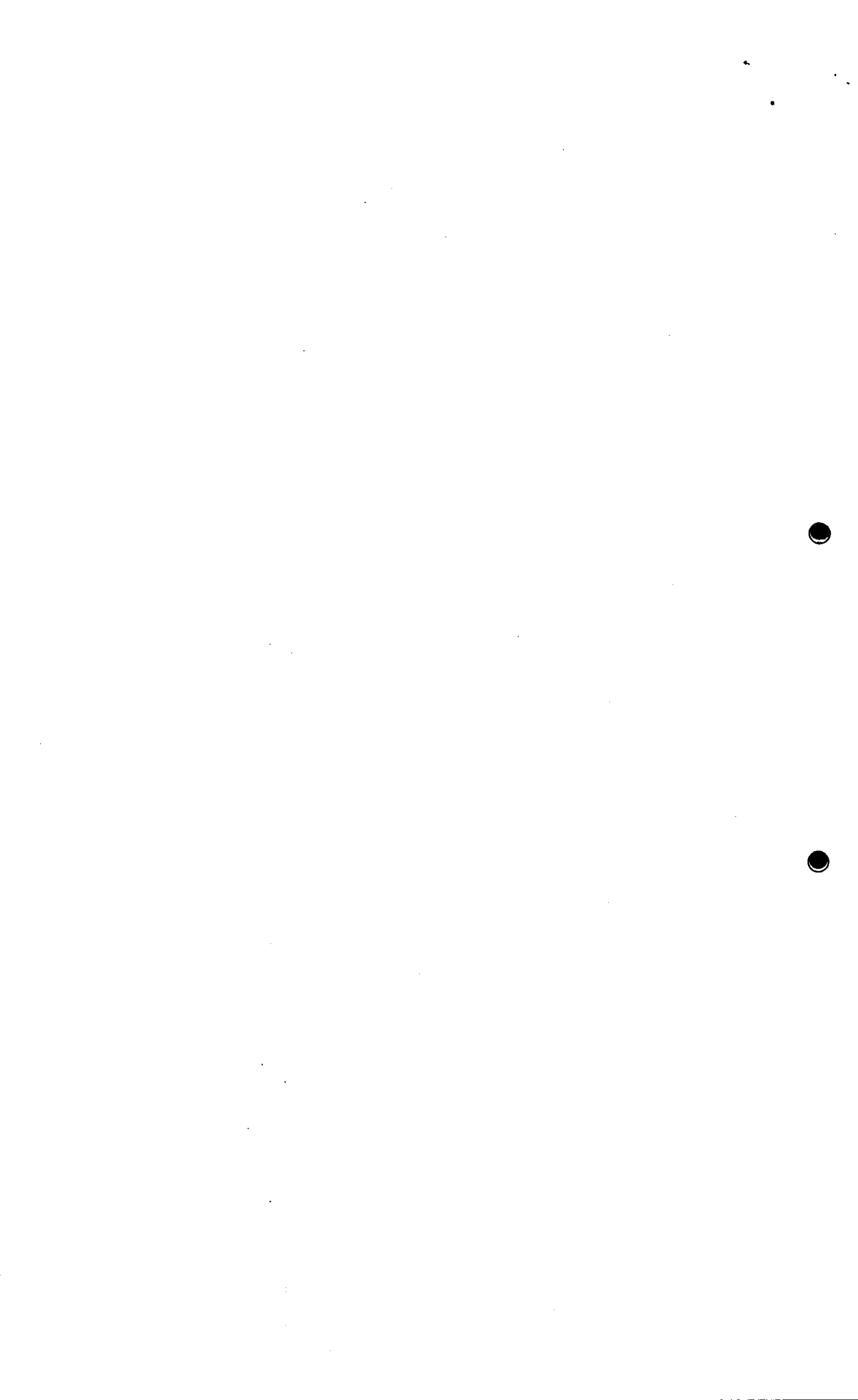
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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 against Show Cause Notice F.No.STC/15-174/OA/2020 dated 23.10.2020 issued to M/s Binary Republik, 202, Gala Mart, Nr. Gala Swing, South Bopal, Ahmedabad, Gujarat-380058.





BRIEF FACTS OF THE CASE :

M/s BINARY REPUBLIK, 202 GALA MART NR GALA SWING SOUTH BOPAL AHMEDABAD GUJARAT 380058 (hereinafter referred to as "the said assessee" for the sake of brevity) is engaged in providing services and for the same was registered with Service Tax Department having Registration (ST-2) No.AERPT1887KSD001.

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, 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, 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. 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 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16. The details of difference as per CBDT data for the F.Y. 2015-16 are as under :

Sr. No.	Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
01	2015-16	38570858	5381384

Therefore, the said assessee has less discharge 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 31-03-2016] for amounting to Rs.5381384/- on the differential value amounting to Rs. 38570858/- along with applicable interest and penalty for the F.Y. 2015-16.

4. It was observed that the clarification regarding the above said differential value along with documents were called for from the said assessee for assessment purpose vide Supdt's letter F.No. CGST-06/04-64/TPD/AR-I/2020-21 dated 19.10.2020. It was seen that the said assessee has been asked to furnish the reason for the difference between taxable value shown in ST-3 Return vis-à-vis Income Tax Return filed by the said assessee for the Financial year 2015-16 alongwith submission of self-certified documents such as audited balance sheet, Profit & Loss account, ledgers, gross trial balance, ITR, Form 26AS, ST-3 Return and details of all the sales invoices issued during F.Y. 2015-16 but the said assessee has neither produce any documentary evidences of the differential value nor submit any reply.

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

6. 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.

7. 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.

8. 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.

9. From the foregoing paras, it was observed that the said assessee have failed to pay/short paid/deposit service tax to the extent of Rs.5381384/- on the difference of taxable value during the period 2015-16 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. 5381384/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs.38570858/- 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.

10. 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 ST3.

11. 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. 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 appears 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.5381384 /-. Thus, it appears that there is a deliberate withholding of essential and material information

from the department about service provided and value realized by them. It appears that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax.

12. 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 Rs. 5381384/- 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.

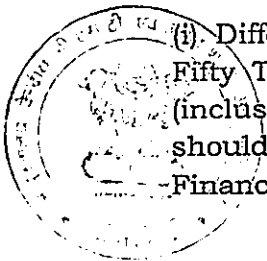
13. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax appears to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of service tax as discussed in the foregoing paras and therefore, the said amount of service tax amounting to Rs.5381384/- (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.

14. 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 appear to have rendered themselves liable to penalty under Section 76 & Section 77 of the Finance Act.

15. 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.

16. Therefore, M/s BINARY REPUBLIK, 202 GALA MART NR GALA SWING SOUTH BOPAL AHMEDABAD GUJARAT 380058 are hereby called upon to show cause to the Additional Commissioner, Central GST & Central Excise, Ahmedabad North, having office at 1st Floor, Custom House, Navrangpura, Ashram Road, Ahmedabad, as to why;

(i) Differential amount of Service Tax amounting to Rs.5381384/- (Rupees Fifty Three lakhs Eighty One thousand Three hundred Eighty Four 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 :

17. The assessee vide letter dated 05.01.2021 has stated that they have already furnished reply to the jurisdiction office on 22.10.2020; that they attached copy of the said reply in which they stated that Binary Republik is engaged in business of providing business Information technology service; that Up to FY 2015-16 Binary Republik is providing only Export Service outside India so not liable for service tax and therefore service tax registration has not been taken; that In March-2016 assessee has planned to start operations in India and so they have applied for service tax registration and got the registration on 22/03/2016; that they have not provided any local services during FY 2015-16; that as registration has been issued in March-2016 they are liable to file Return for the period Oct-Mar-2016 and while filling service tax return for the same period it has shown export service provided from the date of registration in return; that there is mismatch in the value of services in FY 2015-16 between ITR form and ST-3 returns and the reconciliation of the same is furnished in below table:

Particulars	Amount (in Rs.)
Turnover as per Audited Books and ITR (100% Export Services)	40201020
Less: Export Turnover before application for service tax registration	38570857
Less: Export Turnover after application for service tax registration and reported in ST-3	1630163
Difference	NIL

requested to accept the facts mentioned above and requested for conclude the matter that as shown in above table, Export turnover of Rs. 3,85,70,857/- pertains to amount of export services provided before registration and as whole turnover pertains to export of services; that no service tax is payable on the same; that they submit relevant financial records i.e. Form 26AS , Balance sheet, Profit & loss account, Annual Bank account statement, Sample copy of work contract/Purchase order issued by customer and sample copy of FIRC Statement issued by our bankers for realization for export service for the year 2015-16.

PERSONNEL HEARING :

18. Personnel hearing was granted to the assessee on 07.02.2022 wherein Shri Bhima Odedara, Chartered Accountant and authorised representative appeared wherein he submitted reconciliation statement and has stated that they have taken service tax registration in anticipation of domestic business and requested to drop all the proceedings.

DISCUSSION AND FINDINGS:

19 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 05.01.2021 AND 07.02.2022, the documents submitted by the noticee and during the personnel hearing.

19.1 On going through the SCNs, I find that data of Sales /Gross receipt from services was shared by the CBDT with CBIC for FY 2015-16. The difference in value of service to the extent of Rs. 3,85,70,858/- for the year 2015-16 was noticed and therefore, the subject SCNs were issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 53,81,384/- on the basis of ITR filed for the period 2015-16 on value of Rs. 3,85,70,858/- under proviso to section 73(1) of Finance Act, 1944 or not.

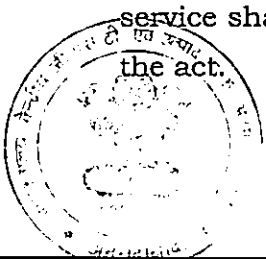
19.2 I find from the records that the assessee is registered under Service Tax and has obtained Service Tax registration in March 2016. The assessee in his defence reply stated that they are engaged in providing business Information technology service, the said services provided as export of services out side India. I find that as per Rule 4 of Export of Service Rules, 2005 any service, which is taxable under clause (105) of section 65 of the Act, may be exported without payment of service tax. The Services provided to their clients are other than given in negative list of Section 66D, for the sake of gravity, I reproduce herewith relevant portion of Service Tax Rules;

"Rule 4 of export of service tax rules, 2005 provides that any service, which is taxable under any clause (105) of section 65 of the act, may be exported without payment of service tax. This means that the service provider is not required to pay service tax on the service which is exported. This implies that the exported services remain taxable services, but attract nil rate of service tax."

Export of services

As per rule 6A of service tax rules, the six essential requisites are to be fulfilled in respect to a service so as to be considered as export service:

- a) It must be a service under sub -section 44 of section 65B. in other words, service shall not be covered under negative list of service provided under 66 D of



- b) The service provider must be located in taxable territory i.e. India
- c) The service receiver is located outside India
- d) The payment for such service is received by the service provider in convertible foreign exchange
- e) The place of provision of the service is outside India as per the place of provision of service rules,2012
- f) The service provider and the service receiver are not merely establishment of a distinct person i.e. branches of assessee in two different tax jurisdictions.

19.3 Further I also find that in support of their reply, the assessee have submitted the copy of Balance Sheet, P&L account, form 26AS for FY 2014-15 statement of Bank Realisation certificate issued to them for Export of service, Ledger for FY 2015-16.

19.4 I have gone through the sales register furnished by the assessee for the year 2014-15, wherein I observe that the assessee provided Services to their foreign clients showing software Development Income totalling Rs. 4,02,01,021/-, the same amount are also reflecting in their Profit and Loss account of the respective year showing software income. The assessee has furnished the copies of sample invoices alongwith the BRC received and the date wise remittance received in their ICICI Bank Account, showing that the entire amount has been received through foreign currency. The assessee has also produced reconciliation statement (as detailed below), while going through the same, I find that the entire amount has been received from Foreign customers and in foreign currency.

Client Name	Client Address	Total Sales During FY 2015-16(In Rs.)
bluLink Solutions	10900 NE 8th Street, Suite 610, Bellevue, WA 98004	55,81,399
Blythedale Children's Hospital	95 Bradhurst Avenue, Valhalla, NY 10595	43,23,392
EPCGROUP.NET	5090 Richmond Avenue, Suite 336, Houston, TX 77056	1,48,32,017
HathwayInc	81 Higuera Street, Suite 220, San Luis Obispo, CA 93401.	8,67,421
Hopkins &Carley	70 South First Street, San Jose, CA 95113-2406	4,47,112
Inkriti	2 Clock Tower Place, Suite 355, Maynard, MA 01754	37,10,239
James Murphy	2nd Floor, 2-4 Kings Road, Reading RG1 3AA, United Kingdom	94,737
Knacktek LLC	5900 Windward Parkway, Suite 410, Alpharetta, GA 30005	13,48,309
Pegasystems Inc.	1, Rogers Street, Cambridge, MA, 02142	9,79,613
PinscriptiveInc	31910 Del Obispo, Suite 100, San Juan Capistrano, CA 92675	23,26,181
R Systems (Singapore) Pte Ltd	16, JalanKilang, #04-01 Hoi Hup Building, Singapore - 159416	2,23,970

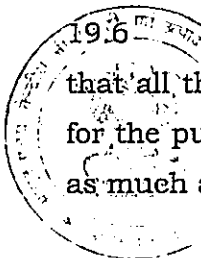
SharePointAce LLC	3527 Mt. Diablo Blvd #394, Lafayette, CA 94549	1,77,350
Tangram Resources LLC	6810 New Tampa Highway, Lakeland, FL 33815	27,13,475
Tech Blocks	399 Applewood Cres. Unit - 4, Vaughan, ON L4K 4J3	25,75,808
Total sales FY 2015-16		4,02,01,021
Sales as per Audited Financials		4,02,01,021

From the above, I find that the assessee total income from Software Development to the tune of Rs. 4,02,01,021 in the year 2015-16, however, the assessee after obtaining Service Tax Registration in March 2016, has filed the Service Tax return reflecting the total income from export of Service to the tune of Rs. 16,30,163/- and therefore the show cause Notice on differential amount of Rs. 38570857 for the year 2015-16 has been issued. However, after reconciliation and scrutiny of every document, I find that there is no difference has been observed by me.

Particulars	Amount (in Rs.)
Turnover as per Audited Books and ITR (100% Export Services)	40201020
Less: Export Turnover before application for service tax registration	38570857
Less: Export Turnover after application for service tax registration and reported in ST-3	1630163
Difference	NIL

19.5 I find that the financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated 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 at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the 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 of the company/ individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

From the above discussions and documents available on records, I find that all the ingredients which formalize/ qualify the activity to be "export of service" for the purpose of Rule 6A of Service Tax Rules 1994, are satisfied by the assessee in as much as (a) the provider is located in the taxable territory (b) the recipient of service




is located outside India (c) the service is not in a negative list (d) the place of provision is outside India in the instant case as per the Rule 3 of Place of Provision of Service Rules, 2012 (e) the payment has been received by the provider of service in convertible foreign exchange (f) the provider of service and the recipient of service are different legal entities established under different laws, hence, they are not merely distinct establishment of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the act.

20 Having considered these factual and documentary evidences available on records, I find no reason to disagree the assessee's contentions. I am therefore of the view that the assessee has established their case quite clearly that the amount shown in Show Cause Notices i.e. Sales of Service under Sales/Gross Receipt from ITR is the value of service is on account of export of service. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

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

ORDER

22 I drop the demand of Rs. 53,81,384/- and proceedings initiated M/s BINARY REPUBLIK, 202 GALA MART NR GALA SWING, SOUTH BOPAL AHMEDABAD GUJARAT -380058 vide Show Cause Notice F.No. STC/15-174/OA/2020 dated 23.10.2020 and accordingly the Show Cause Notice is hereby disposed off.


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

F.No. STC/15-174/OA/2020

To,
M/s BINARY REPUBLIK
202 GALA MART NR GALA SWING,
SOUTH BOPAL AHMEDABAD GUJARAT -380058.

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-VI, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File.