



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH 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/15-296/OA/2021

DIN- 20221164WT000000A9F1
आदेश की तारीख/Date of Order :- 29.11.2022
जारी करने की तारीख/Date of Issue :- 29.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर / Mukesh Rathore

सयुक्त आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 76-77/ADC/MR /2022-23

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

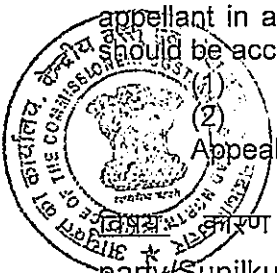
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

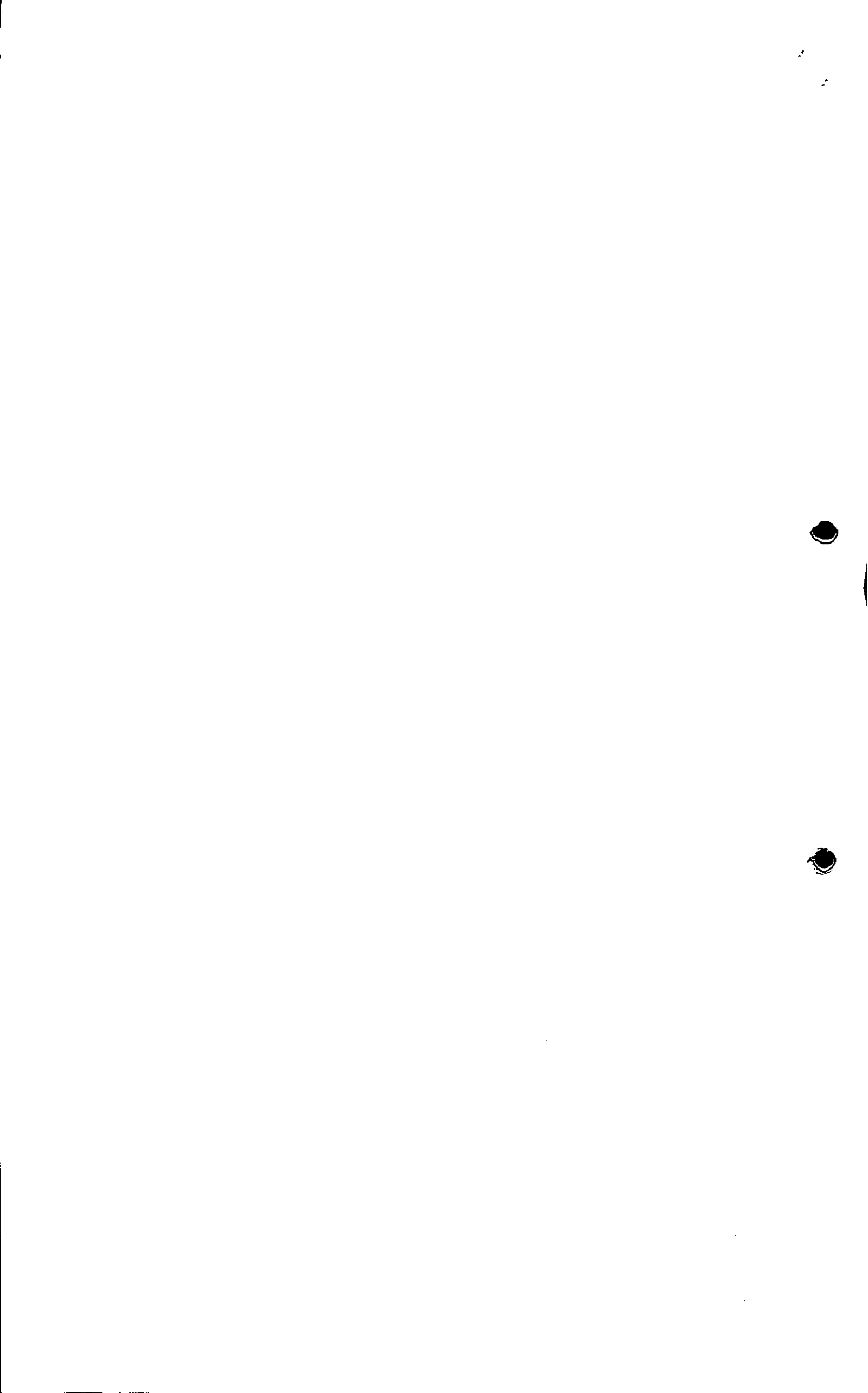
The appeal should be filed in form एस टी -4 (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other which must bear a court fee stamp of Rs.5.00.

कारण बताओ सूचना/ Proceeding initiated vide Show Cause Notice F.No.AR-I/Third party/Sunilkumar/ 2015-16/19-20 dated 29.12.2020 and F.No.STC/15-296/OA/2021 dated 21.10.2021 issued to M/s. Fatesinh Bheruji Vanzara having address at 45/2, Krishna Gokul Society, Near Priya Cinema, N.H.No.8, Krishna Nagar, Ahmedabad, Gujarat 382346.





BRIEF FACTS OF THE CASE:-

M/s. Fatesinh Bheruji Vanzara having address at 45/2, Krishna Gokul Society, Near Priya Cinema, N.H.No.8, Krishna Nagar, Ahmedabad, Gujarat 382346 (hereinafter referred to as the 'said assessee') was registered under Service Tax having registration No.AAGPV4695NST001 and were engaged in the business of providing taxable service.

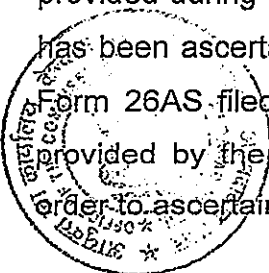
2. On perusal of the data received from CBDT, it was noticed that the said assessee had declared different values in Service Tax Returns (ST-3) and Income Tax Return (ITR/Form 26AS) for the financial year 2016-17.

3. On scrutiny of the above data, it appeared that the assessee had declared less taxable value in their service tax return (ST-3) for the financial year 2016-17 as compared to the service related taxable value declared by them in their Income Tax Return (ITR)/Form 26AS, the details of which were as under :-

Sr. No.	Financial Year	Total Gross Value provided (STR)	Sale of services (ITR)	Total value for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	Higher value (Value difference in ITR & STR) OR (Value difference in TDS & STR)	Resultant service tax short paid (including cess)
1	2016-17	0	66774101	59943773	66774101	1,00,16,115/-

4. 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 returns (ST-3) for the financial year 2016-17, letters dated 13.08.2021 and reminders dated 31.08.2021 and 21.09.2021 were issued to the said assessee.

5. Since the said assessee had not submitted the required details of services provided during the financial year 2016-17, the service tax liability of the said assessee has been ascertained on the basis of income mentioned in the income tax returns and Form 26AS filed by the assessee with the income tax department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.



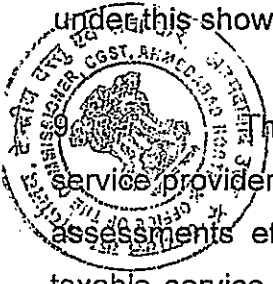
6. No data was forwarded by CBDT for the period 2017-18 (upto June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issuance of SCN, it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

7. Unquantified demand at the time of issuance of SCN

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

8. From the data received from CBDT, it appeared that the "Total Amount paid/credited under Section 194C, 194H, 194I, 194J" or Sales/Gross receipts from services (from ITR) for the financial year 2017-18 (upto June-17) has not been disclosed by the Income Tax Department, nor the reason for the non disclosure was made known to the department. Further, the assessee had also failed to provide the required information even after the issuance of letters and summons from the department. Therefore, the assessable value for the year 2017-18 (upto June-17) was not ascertainable at the time of issuance of show cause notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action would be initiated against the said 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, in as much as the service tax liability arising in future, for the period 2017-18 (upto June-17) covered under this show cause notice, would be recoverable from the assessee accordingly.



The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business

purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the service provider, no matter how innocently. From the evidence on record, it appeared that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appeared to have made deliberate efforts to suppress the value of taxable service to the department and appeared to have not paid the liable service tax in utter disregard to the requirements of law and the trust deposited in them. Such outright act in defiance of law, appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

10. In light of the facts discussed hereinabove and the material evidences available on records, it was revealed that the assessee, M/s. Fatesinh Bheruji Vanzara had contravened the following provisions of Chapter-V of Finance Act, 1994, the Service Tax Rules, 1994;

- (i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;
- (ii) Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable service provided by them as discussed above;
- (iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision
- (iv) All the above acts of contravention on the part of the said assessee appeared to have 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 Section 73(1) of the Finance Act, 1994 by invoking extended period of five years.

All these acts of contravention of the provisions of Section 68 and 70 of Finance Act, 1994 read with Rule 6 and 7 of Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time



- (vi) The said assessee is also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994
- (vii) Section 77 of the Finance Act, 1994 in as much as they did not provide required data/documents as called for from them.

11. The above said service tax liabilities of the assessee has been worked out on the basis of limited data / information received from the Income Tax Department for the financial years 206-17. Thus, the show cause notice relates exclusively to the information received from the Income Tax Department.

12. 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 2016-17.. 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 deposited service tax thereof to the extent of Rs.1,00,16,115/- (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 an 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) pf 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 and penalty under Section 78 of the Finance Act, 1994.

13. The assessee was granted a pre consultation on 20.10.2021 at 11.30 hrs as per Directorate of Legal Affairs, CBEC, New Delhi letter F.No.1080/11/DLA/CC Conference/2016 dated 13.10.2019 through speed post and registered email to present their case. The assessee had appeared for personal hearing and informed that they have given a written submission to the division office. Further, they said that their service was exempted as they were engaged in providing GTA Service. However, no satisfactory reply/documents received from the assessee. Accordingly, as mentioned in above table, service tax of Rs.1,00,16,115/- for the period 2016-17 and liability for the financial year 2017-18 (upto June 17) arises during the course of adjudication is required to be demanded and recovered from the assessee.

14. Therefore, a Show Cause Notice bearing F.No.STC/15-296/OA/2021 dated 21.10.2021 was issued to M/s. Fatesinh Bheruji Vanzara having address at 45/2, Krishna Gokul Society, Near Priya Cinema, N.H.No.8, Krishna Nagar, Ahmedabad,



Gujarat 382346 to show cause to the Additional Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House,. Navrangpura, Ahmedabad as to why:

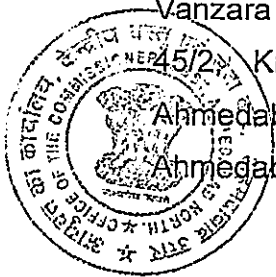
- (i) Service tax to the extent of Rs.1,00,16,115/- (including cess) short paid/ not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Service tax liability not paid during the financial year 2017-18 (upto June-17) ascertained in future, as per Para no.7 & 8 above, should not be demanded and recovered from them under proviso to sub section (1) of Section 73 of the Finance Act, 1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (1) above under Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

15. Further on going through the Third Party CBDT data for the Financial Year 2015-16, it was observed that the said assessee had shown less taxable value in their ST Return for FY 2015-16 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.	Amount as per Income Tax return/26 AS	Taxable value as per ST-3 Returns	Value shown less in ST-3 return by	Resultant Service Tax short paid
1	2015-16	12547233	0	12547233	1882085
	Total				18,82,085/-

16. Therefore a Show Cause Notice bearing F.No.AR-I/Third party/Sunilkumar/2015-16/19-20 dated 29.12.2020 was issued to M/s. Fatesinh Bheruji Vanzara (having Service Tax Registration No.AAGPV4695NST001) having address at 45/2 Krishna Gokul Society, Near Priya Cinema, N.H.No.8, Krishna Nagar, Ahmedabad, Gujarat 382346 by the Assistant Commissioner, CGST & C.Ex., Division-I, Ahmedabad North calling upon to show cause as to why:-



- (i) The demand of service tax to the extent of Rs.18,82,085/- short paid /not paid by them 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 76 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994
- (v) Penalty should not be imposed upon them under the provisions of Rule 7 of Service Tax Rules, 1994 read with Finance Act, 1994.

17. I proceed to adjudicate both the SCNs together in view of Para 11.5 of Master Circular dated 10.03.2017 wherein it is stated that in case different SCNs have been issued on the same issue to the same noticee answerable to different adjudicating authorities, SCNs involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

DEFENCE REPLY :-

18. In response to Show Cause Notice dated 21.10.2021, the said assessee vide letter dated 18.11.2021 submitted their reply wherein they submitted that they are engaged in service of transportation of goods by road (GTA); that according to Notification No.30/2012-ST dated 20.06.2012 liability to pay service tax has been shifted to service receiver; that they have rendered service only to the specified service receivers; that as per the said notification they were not required to pay service tax. They submitted the following documents :-

- (1) Income Tax returns for the period 2015-16 and 2016-17
- (2) Balance sheet for the period 2015-16 and 2016-17
- (3) Form 26AS
- (4) Copies of Work order
- (5) Statement of freight

They requested for an opportunity to be heard in person.

PERSONEL HEARING :-

Personal Hearing in this case has been granted to the assessee on Shri Fatesinh Bheruji Vanzara, Proprietor appeared for personal hearing



on 18.11.2022. He reiterated their written submission dated 18.11.2021 and requested to drop the show cause notice.

DISCUSSION AND FINDINGS :-

20. 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.

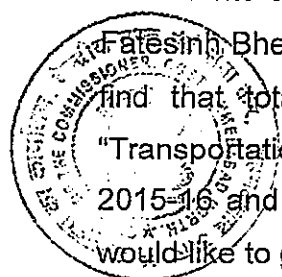
21. I have carefully gone through the records of the case, SCN, defence reply as well as oral submissions made by the said assessee during the course of personal hearing.

21.1 I find that the following two SCNs have been issued to the said assessee on the basis of Form 26AS/ITR data received from Income Tax authorities. 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(1)(a), 77(1)(c) 77(2) & 78 of the Finance Act, 1994.

Sr. No.	SCN No.	SCN Date	Service tax demand (Rs.)	Period
1	AR-I/Third party/Sunilkumar/2015-16/19-20	29.12.2020	18,82,085/-	2015-16
2	STC/15-296/OA/2021	21.10.2021	1,00,16,115/-	2016-17
		TOTAL	1,18,98,200/-	

22. In reply to the show cause notice, the said assessee has contended that that they are into the business of transportation of goods by road i.e. Goods Transport Agency; that according to Notification No.30/2012-ST dated 20.06.2012, the service tax liability was shifted to service receiver in case of GTA service under reverse charge mechanism which means they were not required to pay service tax..

23. I find that the said assessee is registered under Service Tax Department. They have not produced ST-3 returns for the above mentioned period. On the basis of documents submitted by the said assessee i.e. Audited Balance sheet, I find that the assessee Bheruji Vanzara is the Proprietor of M/s Shree Gurukrupa Transport Service. I find that total income as per the SCN and the income shown under the head "Transportation Income" in the audited books of the said assessee for the financial year 2015-16 and 2016-17 are Rs.1,25,47,233/- and Rs.6,67,74,101/-, respectively. Now I would like to go through the legal aspects of the taxability of GTA services.



24. Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994 provided that;
- (d) "person liable for paying service tax", -
- (i) in respect of the taxable services notified under sub section (2) of Section 68 of the Act, means, -

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage :

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

25. Para I(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(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

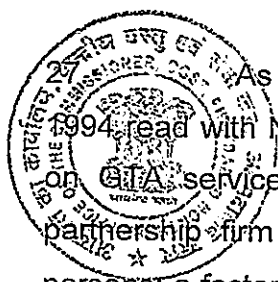
Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
02	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

26. On perusing Form 26AS for FY 2015-16 and 2016-17, the following details of Amount Paid/ Credited and the name of TDS deductor are noticed.

Details of FORM 26AS for FY 2015-16		
Section under which TDS deducted	Name of TDS Deductor	Amount paid/credited
194C	Anmol Logistics	897178
194C	Hindustan Petroleum Corpn. Ltd.	1469639
194C	Anopsingh Ravubha Jadeja	4955589
194C	Essar Oil Ltd	3236083
	TOTAL	1,05,58,489

Details of FORM 26AS for FY 2016-17		
Section under which TDS deducted	Name of TDS Deductor	Amount paid/credited
194C	GUJARAT STATE PETROLEUM CORPORATION LTD	30,000
194C	HINDUSTAN PETROLEUM CORPN. LTD	13,28,229
194C	HINDUSTAN PETROLEUM CORPN. LTD	5,29,884
194C	HINDUSTAN PETROLEUM CORPN. LTD	90,904
194C	FINE TECH CORPORATION PRIVATE LIMITED	1,30,67,900
194C	ANOPSINGH RAVUBHA JADEJA	13,68,200
194C	ESSAR OIL LIMITED	4,35,28,656
	TOTAL	5,99,43,773

As per provisions contained in Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on CTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons, a factory registered under or governed by the Factories Act, 1948 (63 of 1948)



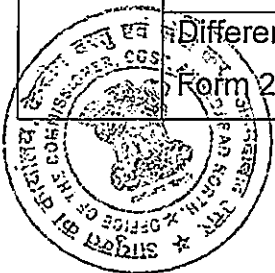
and any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder is payable in Reverse Charge Mechanism by the service recipient. However, if the freight is paid by an individual / proprietorship firm or HUF then the service tax thereon shall be paid by the GTA itself i.e. the service provider himself.

28. On the basis of documents submitted by the said assessee viz. work order, I find that the said assessee have provided GTA service to M/s Hindustan Petroleum Corporation Ltd.. (M/s HPCL) for transportation of bulk petroleum products by road Ex Palanpur, M/s Essar Oil Limited (M/s EOL) for transportation of petroleum products from its terminals to various locations, M/s Fine Tech Corporation Pvt. Ltd. for transportation of petroleum products and M/s Gujarat State Petroleum Corporation Ltd. (M/s GSPC) for transportation of crude oil. I find that the said assessee in their defence reply has claimed that service tax is payable under Reverse Charge Mechanism as per Notification No.30/2012-ST dated 20.06.2012. Since, M/s Hindustan Petroleum Corporation Ltd., M/s Essar Oil Limited , M/s Fine Tech Corporation Pvt. Ltd. and M/s Gujarat State Petroleum Corporation Ltd. all are body corporate, the service receivers are liable to pay service tax under Reverse Charge mechanism on the GTA service provided by the said assessee. I would like to discuss the issue year wise.

Financial year : 2015-16 :-

29.1 I find that total income as per the SCN and the income shown under the head "Transportation Income" in the audited books of the said assessee for the financial year 2015-16 is Rs.1,25,47,233/- whereas the total amount credited in Form No.26AS is Rs. 1,05,58,489/-. As the income shown in their audited books is on the higher side, I take Rs. 1,25,47,233/- as their income for the year 2015-16 for determining the taxability of the income. The details are as below :-

Sr. No.	Particulars	Name of the party	Amount
1	Transportation income as per SCN and Balance Sheet		1,25,47,233/-
	Total amount Credited as per Form 26AS	Anmol logistics	897178
		Hindustan Petroleum Corp	1469639
		Anopsingh Ravubha Jadeja	4955589
		Essar Oil Ltd	3236083
		TOTAL	1,05,58,489/-
	Difference between transportation income as per B/s & Form 26AS		19,88,744/-



In view of the discussion as per Para 28, I find that the said assessee is not required to pay service tax on the transportation income received from M/s Hindustan Petroleum Corporation Ltd.. amounting to Rs.14,69,639/- and M/s Essar Oil Ltd amounting to Rs.32,36,083/- totally amounting to Rs.47,05,722/- and the same is liable to be dropped.

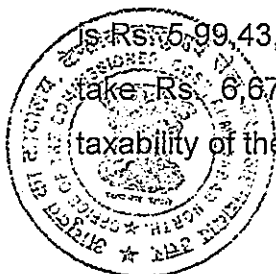
29.2 As regards, the remaining transportation income received from M/s Anmol Logistic amounting to Rs.8,97,178/-, Anopsingh Ravubha Jadeja amounting to Rs.49,55,589/- and the difference of transportation income between B/s & Form 26AS amounting to Rs.19,88,744/-, totally amounting to Rs.78,41,511/-, the said assessee has not submitted any ledger, work order, documents to prove the legal status of firm from whom the said amount was received. Hence, in absence of documents, the transportation income of Rs.78,41,511/- cannot be treated as transportation income received from a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944).

Therefore, I find that the said assessee is liable to pay service tax on the transportation income of Rs.78,41,511/- which comes to Rs.3,41,106/-, as detailed below :-

Sr. No.	Year	Transportation income	Abatement @ 70% as per Not. No.8/2015-ST dtd. 1.3.15	Taxable value	Service Tax @ 14.5%
1	2015-16	Rs.78,41,511/-	Rs.5489058/-	Rs.23,52,453/-	Rs.3,41,106/-

Financial year : 2016-17 :-

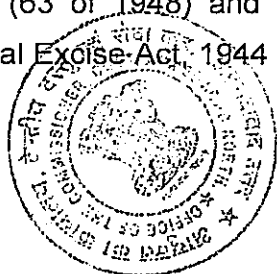
30 I find that total income as per the SCN and the income shown under the head "Transportation Income" in the audited books of the said assessee for the financial year 2016-17 is Rs. 6,67,74,101/- whereas the total amount credited in Form No.26AS is Rs.5,99,43,773/-. As the income shown in their audited books is on the higher side, I take Rs. 6,67,74,101/- as their income for the year 2016-17 for determining the taxability of the income. The details are as below :-



Sr. No.	Particulars	Name of the party	Amount
1	Transportation income as per SCN and Balance Sheet		6,67,74,101/-
	Total amount Credited as per Form 26AS	GUJARAT STATE PETROLEUM CORPORATION LTD	30,000
		HINDUSTAN PETROLEUM CORPN. LTD	13,28,229
		HINDUSTAN PETROLEUM CORPORATION LIMITED	5,29,884
		HINDUSTAN PETROLEUM CORPORATION LTD	90,904
		FINE TECH CORPORATION PRIVATE LIMITED	1,30,67,900
		ANOPSINGH RAVUBHA JADEJA	13,68,200
		ESSAR OIL LIMITED	4,35,28,656
		TOTAL	5,99,43,773/-
	Difference between transportation income as per B/s & Form 26AS		68,30,328

In view of the discussion as per Para 28, I find that the said assessee is not required to pay service tax on the transportation income received from M/s GSPC Ltd. amounting to Rs.30,000/-, M/s HPCL amounting to Rs.19,49,017/-, M/s Fine Tech Corporation Pvt. Ltd. amounting to Rs.1,30,67,900/- and M/s Essar Oil Ltd amounting to Rs.4,35,28,656/- totally amounting to Rs.5,85,75,573/- and the same is liable to be dropped.

30.2 As regards, the remaining transportation income received from M/s Anopsingh Ravubha Jadeja amounting to Rs.13,68,200/- and the difference of transportation income between B/s & Form 26AS amounting to Rs.68,30,328/-, totally amounting to Rs.81,98,528/-, the said assessee has not submitted any ledger, work order, documents to prove the legal status of firm from whom the said amount was received. Hence, in absence of documents, the transportation income of Rs. 81,98,528/- cannot be treated as transportation income received from a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944).



Therefore, I find that the said assessee is liable to pay service tax on the transportation income of Rs. 81,98,528/-, which comes to Rs.3,68,934/-, as detailed below :-

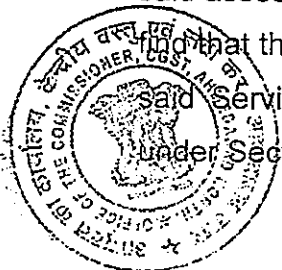
Sr. No.	Year	Transportation income	Abatement @ 70% as per Not. No.8/2015-ST dtd. 1.3.15	Taxable value	Service Tax @ 15%
1	2016-17	Rs.81,98,528/-	Rs.5738970/-	Rs.24,59,558/-	Rs.3,68,934/-

31. In view of the foregoing, I find that the said assessee is liable to pay service tax amounting to Rs.3,41,106/- for the year 2015-16 and Rs.3,68,934/- for the year 2016-17, totally amounting to Rs.7,10,040/- and the same is liable to be recovered from them.

32. 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 amounting to Rs.7,10,040/- as worked out in Tables supra for Financial Year 2015-16 and 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.

33. 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 said assessee had failed to pay their Service Tax liabilities in the prescribed time limit, I find that the said 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.



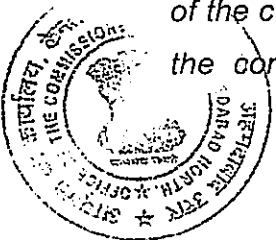
34. The said assessee failed to furnish information/documents as called for thereby rendering themselves liable for penalty under Section 77(1)(c) of the Finance Act, 1994; that they failed to determine the correct value of taxable service provided by them, thereby rendering themselves liable for penalty under Section 77(2) of the Finance Act, 1994. I further find that the said assessee had failed to file the periodical service tax returns in terms of the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and thus rendered themselves liable for penalty/late fee under Section 70 of the Finance Act, 1994, for the period 2015-16 as under :-

Sr. No.	Period of return	Due date of filing	Filed on	Penalty/ Late fee payable (Rs.)
1	April to Sept-2015	25.10.2015	Not filed	20,000
2	Oct-15 to Mar-2016	29.04.2016	Not filed	20,000
			Total	40,000

35. As far as imposition of penalty under Section 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 intend to evade the same. It is also a fact that they had deliberately suppressed the value of services provided by them, with an intent to evade the proper payment of service tax on its due date. These facts would not have come to light had the CBDT not shared the data. The assessee had 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 said 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 under Section 78 of Finance Act, 1994.

36. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of UIO 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.

37. As regards the issue of imposition of penalty under Section 76 of the Finance Act, 1994, I observe that penalty under Section 76 and 78 of the Finance Act, 1994 are mutually exclusive and once penalty under Section 78 is imposed, no penalty under Section 76 can be imposed in terms of the proviso inserted in Section 73 w.e.f 10.05.2008 in this regard. Hence, I refrain from imposing any penalty under Section 76 of Finance Act, 1994.

38. On perusal of para 6,7 & 8 of the SCN, I find that the levy of service tax for Financial Year 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 financial year 2017-18 (upto June 2017) in charging part of the SCN.

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

ORDER

(i) I confirm the demand of Service Tax of **Rs.3,41,106/-** for the year 2015-16 and **Rs.3,68,934/-** for the year 2016-17, totally amounting to **Rs.7,10,040/-** (including cess) (Rupees Seven Lakh Ten Thousand Forty Only), which was not paid/short paid during the Financial Year 2015-16 and 2016-17 as per Tables supra, and order to recover the same from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994; I drop the remaining demand of Service Tax amounting to **Rs.1,11,88,160/-** as discussed above;

(ii) I confirm the demand of Interest at the appropriate rate and order to recover the same 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. Fatesinh Bheruji Vanzara under Section 77(1)(c) of the Finance Act, 1994;
- (iv) I impose penalty of Rs.10,000/- on M/s. Fatesinh Bheruji Vanzara under Section 77(2) of the Finance Act, 1994;
- (v) I do not impose penalty on M/s. Fatesinh Bheruji Vanzara under Section 76 of the Finance Act, 1994 as discussed above.
- (vi) Late fee of Rs.40,000/- (Rupees Forty Thousand Only) be charged and recovered from them in terms of the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 for non filing/late filing of service tax returns for the period under question.
- (vii) I impose Penalty of Rs.7,10,040/- (including cess) (Rupees Seven Lakh Ten Thousand Forty 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. Fatesinh Bheruji Vanzara 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. Fatesinh Bheruji Vanzara 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.

40. Accordingly the Show Cause Notice bearing F.No.AR-I/Third party/Sunilkumar/ 2015-16/19-20 dated 29.12.2020 and SCN bearing F.No.STC/15-296/OA/2021 dated 21.10.2021 are disposed off.



By RPAD
F.No. STC/15-296/OA/2021

To,
M/s. Fatesinh Bheruji Vanzara
45/2, Krishna Gokul Society,
Near Priya Cinema, N.H.No.8,
Krishna Nagar,
Ahmedabad, Gujarat 382346

(Mukesh Rathore)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

Dt.:- 29.11.2022

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-I Ahmedabad North.
3. The Superintendent, Range-II, Division-I, 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.

