आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009
FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD – 380009
ई-मेल/E-Mail : ofadjhq-cgstamdnorth@gov.in, oaahmedabad2@gmail.com
फ़ोन/Phone : 079-27544599 फैक्स/Fax : 079-27544463

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **STC/15-78/OA/2020**

आदेश की तारीख़/Date of Order:-11.03.2022

जारी करने की तारीख़/Date of Issue :- 11.03.2022

DIN NO: 20220364WT00009959C9

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 76/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 विरूद्ध 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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो 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. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-.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 विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice **No. STC/15-78/OA/2020 dated 29.09.2020** issued to **M/S. Abhivyakti Communication** situated at 3, Sanhath Apartment, 18/A, Swastik Society, B/h State Bank of India, Nr. Stadium Cross Road, Navrangpura, Ahmedabad-380009.

BRIEF FACAT OF THE CASE

M/s. Abhivyakti Communications, 3, Sanhath Apartment, 18/A, Swastic Society, B/h, State Bank of India, Nr. Stadium Cross Road, Navrangpura, Ahmedabad-380009 (hereinafter referred to as the Assessee) is engaged in the business of providing Advertisement Agency services and was holding Service Tax registration No. AAJFA2921PST001. An analysis of 'Sales/Gross Receipts from Services (Value from ITR)' and 'Gross Value of Services Provided' was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 & 2015-16 and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

2. On perusal of third party data for the period 2014-15 & 2015-16 shared by CBDT, it was noticed that they have shown less value in their ST-3 returns compared to the value shown in their Income Tax Return (ITR). The assessee has not justified the difference in value between the ST-3 returns and ITR for the period 2014-15 & 2015-16. Therefore Service Tax on the said differential value was required to be recovered from them along with applicable interest. The details of total Service Tax liability for the year 2014-15 and 2015-16 worked out as under:-

Sl.No.	Description	F.Y. 2014-15 (Rs.)	F.Y. 2015-16 (Rs.)	Total (Rs.)
1.	Value as per P&L/ITR	3,42,00,699/-	2,71,36,481/-	6,13,37,180/-
2.	Value Declared in ST-3 Returns	80,63,157/-	54,09,977/-	1,34,73,134/-
3.	Differential Value (1-2)	2,61,37,542/-	2,17,26,504/-	4,78,64,046/-
4.	Service Tax Payable (at highest rate for the F.Y.)	32,30,600/-	31,50,343/-	63,80,943/-

3. From the above, it was observed that there is a differential value of Rs. 4,78,64,046/-, when compared with amount received as per P&L Account/Balance Sheet/ITR Value and ST-3 Returns. The assessee is providing advertisement agency services, dealing with selling of space for advertisement in various newspapers. As per Section 65, the taxable value in case of advertisement agency service is the gross amount charged for the taxable services include any amount received towards the taxable service before, during or after the provisions of such service. However, it is noticed that the assessee is paying service tax on certain portion of the gross amount received by them during the course of service, citing the reason that they are liable to pay service tax only on 15% of value received by them. However, as the taxable value is gross amount charged by them it appears that they have short paid service tax. Accordingly, a differential value of Rs. 4,78,64,046/- was worked out in relation to the value declared in their books of account vis-à-vis to value declared in the ST-3 returns. The service tax amounting to Rs.63,80,943/-involved on the above differential value at highest rate is required to be recovered.

4. Accordingly the said assessee had mis-declared / suppressed the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed by them for the F.Y. 2014-15 and 2015-16 and consequently short paid / not paid the applicable Service Tax on whole amount of services provided by them. In view of above, it appeared that the assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent

of Rs. 63,80,943/- by declaring less value in their ST-3 Returns vis-à-vis their ITR/ P&L Acc./Balance Sheet, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. It was also noticed that at no point of time, the assessee has 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 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. 63,80,943/-. It appeared that the above act of omission on the part of the Assessee resulted into short payment/non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intention to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is to be recovered from them under the provisions of Section 73 of the Finance Act, 1994 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 and accordingly they rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Accordingly Show Cause Notice dated 29.09.2020 was issued to M/s. Abhivyakti Communications asking them 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.63,80,943/- (Rupees Sixty Three Lakh Eighty Thousand Nine Hundred Forty Three only) short paid /not paid by them for F..Y. 2014-15 and 2015-16, 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 under Section 77 of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY

7. The assessee vide letter dated 26.10.2020 submitted that they are dealing in buying space and time on behalf of their customers in print as well as electronic media to release the advertisement. A person or organization who want to advertise their product or service approaches to the Agency. Therefore such a person who wants to avail the services of advertising agency becomes the client of the advertising agency. The agency shall contact and book advertisement with publications or media on behalf of its clients. The publisher

or media charges to the agency for the advertisement released on behalf of agency's client and the agency pays to the publisher or media on behalf of its clients. The agency is entitled to get the same reimbursed on submission of invoices or bills from the clients.

8. The said assessee is entitled to get discount or commission @ 15% from publishers or media for publication of advertisement with them. The Assessee charges to its client gross amount including the cost of advertisement i.e. 85% to be paid to publishers or media and discount or commission @ 15% as income for the Assessee. The Assessee has charged service tax on the amount of discounts or commission earned and not on the gross amount charged to its clients in case of advertisement in print media. In case of advertisement in other than print media the Assessee charges service tax on gross amount charged to clients. The taxability of service tax on sale of space and time for advertisement is governed by Section 65(105)(zzzm) of the Finance Act. The Assessee also relied upon the clarification issued by para 4 of F.No. 341/43/96-TRU dated 31.10.1996. They have also referred the below mentioned judgments of various appellate tribunals and courts in favour of their contention.

- M/s Adwise Advertising Pvt Ltd vs Union of India -2006 (2) STR 375 (Mad.)
- M/s Everest Brand Solution Pvt Ltd Vs CST, Delhi CESTAT
- Dabur India Limited vs. CCE, Chandigarh-2017-TIOL-2954-CESTAT-CHD
- Maulis Advertising Services Pvt Ltd vs Commissioner of Service Tax, Chennai, CESTAT ST/48/2008

9. The Assessee also contend that vide notification No 09/2009 ST dated 03.03.2009, the Ministry has exempted the taxable services specified in clause (105) of section 65 of the said Finance Act, which are provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax leviable thereon under section 66 of the said Finance Act subject to certain conditions. On the basis of information provided in Demand-cum-show cause notice, it has been observed variation in Value as mentioned in ITR/P & L and value declared in ST-3 Return. The asessee also submitted reconciliation of values declared and service tax calculation.

10. On the issue of non availing abatement in ST-3 return, the assessee contended that mistakes were committed by the their clerk, who was not well conversant with the provisions relating to service tax and discharged liability of service tax. For the period under review, the figures shown in ST-3 returns in part B1.1 are net taxable values arrived after deducting non taxable values payable to print media. However, the gross amount charged to clients should have been mentioned In part B1.1 and deduction for non taxable payments to be shown in Part B1.11 or Part B1.12. Due to clerical error, service tax cannot be demanded on the net taxable items of purchase and reimbursement of space and time from print media. Also, Utilities provided by the department did not contain any specific method to declare the abatement available in respect of advertisements purchased from print media houses.

11. The impugned show cause notice has been issued on the basis of difference between the figures of ITR and ST-3 returns submitted by the assessee. It is alleged that assessee has not paid service tax on certain amount

received by the aseessee which was not shown in the ST-3 return but was reflected in the Balance Sheet. The impugned show cause notice has proposed the demand on the differential amount as shown in the Balance Sheet and ST-3 return. However, while raising the demand, it is not proved that the differential amount was received on account of providing of taxable service. It has been held by Hon'ble Ahmedabad Tribunal that before raising the demand on the difference between the amounts of ST-3 return and Balance Sheet, the adjudicating authority should reconcile these figures by adopting the proper methods. This has been decided in the case of

1) *COMMISSIONER OF SERVICE TAX, AHMEDABAD VERSUS PURNI ADS. PVT. LTD. [2010 (19) S.T.R. 242 (Tri. - Ahmd.)].*
2) ***M/S GALAXY DATA PROCESSING CENTRE [SCN NO. V (ST)ADJ-II/JPR-II/401/2012/1964-65, DT. 19.10.2013]***

12. On light of above decisions, the assessee contended that by finding the difference in the ST-3 figures and the Balance sheet figures does not mean that the assessee has short paid or suppressed the service tax. Therefore the department should come up with proper evidence to this effect that the amount shown in the balance sheet is that amount on which service tax has to be paid by the assessee and they have not paid service tax on the same. In the instant case also, the demand has been proposed in the impugned show cause notice simply on the grounds that there is difference between the figures of the Balance Sheet and ST-3 return. However, it has not been proved that the said difference is on account of receipts from taxable income. Therefore, in the light of above cited decision, the show cause notice issued alleging that the service tax paid by them is short paid is totally erroneous and is liable to be set aside.

13. The department has not provided the information regarding the documents relied upon for issuance of Show cause Notice as mentioned "Annexure-A" in the notice. If the department alleges that the amount shown in the Profit & Loss Account were taxable receipts, on which the it should prove the same by cogent and corroborative evidences. On the other hand, in the impugned show cause notice, no such cogent and corroborative evidence has been put forth to substantiate the allegation that the differential amounts were taxable receipts. Such a demand which is merely based upon assumptions and presumptions is not justified and is liable to be set aside.

14. Without prejudice to forgoing paras, it was submitted that there are differences between the figures shown in the Balance sheet and figures shown in the ST-3 return and such differences are on account of basic accounting principles followed in preparing both of these documents. There are differences between the Balance Sheet and ST-3 return due to many reasons, some of which are illustrated as follows:-

- The Profit & Loss is prepared on the basis of Services rendered adjusting amount to be offered to clients like discounts or rate differences. On the other hand, ST-3 return is prepared on the basis of amount of services provided without giving effect to the Discounts given to clients.
- The Balance Sheet is the statement of a particular financial year where all the types of assets and liabilities are included. On the other hand, the ST-3 return is the statement of only receipts from the taxable income. Any receipt which is not on account of taxable service is not considered while preparing the ST-3 return.

- Balance Sheet considers only net profit (after deducting all the direct and indirect expenses) which is appropriated therein. On the other hand, since service tax is payable on invoice value and no direct or indirect expenses are considered while showing the values in ST-3 return.

15. Thus, there is vital difference in the basic Accounts concepts of preparing Balance Sheet and ST-3 return. As such, the figures which are shown in the Balance Sheet will always be different than those shown in the ST-3 return.

16. The show cause notice issued on the basis of third party data for the period FY 2014-15 and FY 2015-16 shared by the CBDT alleging that the assess has not justified the difference in value between the ST-3 returns and ITR for the FY 2014-15 and FY 2015-16. Therefore Service tax on the said differential value is to be recovered from the assessee along with applicable interest.

17. In the above matter, the assessee contends that the department has not issued any preliminary notice or informed to the assessee and failed to provide the reasonable opportunity for justification of the above mentioned differential values. The department has come up with demand-cum-show cause notice alleging that the assessee has mis-declared / suppressed the gross value of services provided in ST-3 returns and determining the amount of service tax short paid / not paid by the assessee. This contention of department is unjustified and against the principles of Natural Justice.

18. The impugned show cause notice has proposed to impose the penalty under section 77 on the grounds that they failed to asseess their correct service tax liability and failed to file correct service tax returns. In this regard, it is submitted that assessee has maintained all the books of accounts and other documents as required to maintained under the provisions of service tax and has not failed to provide any information which is called for by any of the office of the department in accordance with the provisions of chapter or rules made there under. The assessee has duly assessed service tax liability and discharged the same in accordance with the provisions and rules made under the Finance Act. Also, the department has not asked / demanded any information with regard to the difference appearing between Profit & Loss Account and ST-3 returns. The assessee has filed all the ST-3 returns within stipulated time period and has also got books of accounts audited and filed income tax returns within the time. The same are available as and when required to be verified by from department's data. Hence, Such an allegation is void and initio as per the impugned show cause notice itself. Therefore, the impugned show cause notice is not justified in imposing the penalty under section 77 for non supply of information and is liable to be set aside.

19. It is further submitted that the impugned show cause notice is alleging that they are liable to pay penalty under Section 78 of the Finance Act, 1994. In this regard, the analysis of section 78 makes it clear that no penalty can be imposed under Section 78 of the Finance Act, 1994 if there was no willful suppression or intention to evade payment of service tax on the part of the assessee. It is pertinent to submit that they have deposited applicable service tax, on the taxable services. While maintaining that no service tax was leviable, in relation to the remaining services; it is stated that it was a bona fide dispute relating to interpretation of terms of the contract and provisions of service tax. There is no concealment, or suppression with intention to evade tax. As such

no penalty can be levied in the present case.

20. It is also submitted that for imposing penalty, presence of mens-rea is a mandatory requirement and in the absence of which imposition of penalty is unjustified, as enshrined by the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd v/s. State of Orissa - [1978 (2) ELT (J-159)]* and number of subsequent judgments from various judicial fora based thereupon. It is submitted that none of the acts were backed up with any ulterior motive or mala fide intention to evade duty and therefore, imposition of penalty is incorrect and uncalled for based on settled position on the issue. It is further submitted that the Hon'ble Punjab & Haryana High Court, following the ratio of Apex Court judgment in Hindustan Steel Ltd. (supra), has held that mens-rea is a mandatory requirement for imposition of penalty, in support of which reliance is placed on the ratio of following judgments:

- *2010 (258) ELT 465 (SC) – Sanjiv Fabrics*
- *2007 (5) STR 251 (P & H) – Kamal Kapoor*

21. In the above decisions, it was held that the penalty is imposable only if there was mala fide intention on part of the assessee, else it will not sustain. In the instant case, no mala fide intention is proved but they have proved their case that there was no ulterior motive. Therefore the impugned show cause notice is not tenable and is liable to be set aside. The assessee has maintained all the books of accounts and gets the same audited from time to time. Also, the assessee is willing to present the same before you for verification wherever required by you.

22. The department has failed to mention the Document Identification Number (DIN) in Show cause notice issued as mandated by the Circular No 122/41/2019-GST dated 05.11.2019. Therefore, the said show cause notice is treated as null and void. However, the assessee, being a law abide tax payer of the country believes by responding to the show cause notice full co-operation for assessment of their service tax and discharging of service tax liability. In view of the above representation and case laws, the assessee requested to drop the show cause notice along with corresponding interest and penalty provisions as mentioned in the instant Show Cause Notice. The assessee further requested to provide reasonable opportunity to be heard in person before adjudicating the matter.

23. Further letter dated 21.02.2022, the assessee submitted detailed reconciliation of the differential value. According to which they are offering trade discounts to the tune of Rs.13,78,683/- for the year 2014-15 and Rs.29,25,502/- for the year 2015-16. Trade discounts are offered by the assesss as adjustments includes the normal trade discounts offered to clients out of assessee"s share of 15% discounts from publications. Further during the year 2014-15 service tax paid Rs.5,94,142/- was added as required by the section 145A of IT Act for the purpose of calculation of income from business/profession. The same is deducted as expenses in P&L for calculation of net profit. Further there is an excess turnover in ST 3 returns are those transitions which were either reduced / cancelled //non payment by clients of assessee after the ST 3 was filed. Hence the service tax has already been paid on those excess amount as per ST3 but turnover was reduced while auditing under the IT Act.

PERSONNEL HEARING

24. A personal hearing was granted to the said assessee on 29.09.2021 which was attended by Shri Jaydip Nakrani, Prop of the firm and Shri Paresh Rupabhinda, CA,. They have submitted reconciliation statement for the F.Y 2014-15 and 2015-16, copies of ITR, copy of sales account, copies of invoices. They reiterated their earlier written submissions dt.26.10.2020 and requested to drop the proceedings. They have also furnished additional submissions/reconciliation vide letter dated 18.02.2022.

DISCUSSION AND FINDINGS

25. I have carefully gone through the records of the case, SCN, defence replies, reconciliation statement, duly audited Balance sheet, copies of Income Tax Returns for the FY 2014-15 & 2015-16, Form 26AS as well as oral submissions made by the said assessee during the proceedings. In the instant case, I find that M/s. Abhivyakti Communications is engaged in the business of providing Advertisement Agency services and was holding Service Tax registration No. AAJFA2921PST001. In the present case, Show Cause Notice has been issued to the noticee demanding Service Tax of Rs. 63,80,943/- for the financial year 2014-15 and 2015-16 on the basis of data received from Income Tax authorities and finding that the noticee had obtained Service Tax registration and also filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. The Show Cause Notice alleged non-payment of Service Tax, also proposed 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. An analysis of 'Sales/Gross Receipts from Services (Value from ITR)' and 'Gross Value of Services Provided' was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 & 2015-16 and details of said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC). On perusal of third party data for the period 2014-15 & 2015-16 shared by CBDT, it is noticed that they have shown less value in their ST-3 returns compared to the value shown in their Income Tax Return (ITR). The assessee has not justified the difference in value between the ST-3 returns and ITR for the period 2014-15 & 2015-16. Therefore Service Tax on the said differential value is also required to be recovered from them along with applicable interest. For calculation and demand of the Service Tax, the maximum amount of difference between Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15 & 2015-16 and accordingly SCN was issued to the said assessee to recover the short paid Service Tax of Rs.63,80,943/- along with interest and penalty. The taxability of service tax on sale of space and time for advertisement is governed by Section 65(105)(zzzm) of the Finance Act which reproduced as below :

A. Date of introduction:

01.05.2006 vide Notification No. 15/2006 - ST dt.24.04.2006

B. Definition and scope of service:

*"**Advertisement**" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.*

(Section 65(2) of Finance Act, 1994 as amended)

*"**Sale of space or time for advertisement**" for the purpose of section 65(105) (zzzm), includes,-*

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on bill-boards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organization; and

(iii) aerial advertising

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

***"Print media"** for the purpose of section 65 (105) (zzzm), means,-*

(i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867)

(ii) "book" as defined in sub section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867) but does not include business directories, yellow pages, and trade catalogues which are primarily meant for commercial purposes.

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

***"Taxable service"** means any service provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organization.*

Explanation 1.- For the purpose of this sub-clause, "sale of space or time for advertisement" includes, -

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organization; and

(iii) aerial advertising

Explanation 2.- For the purposes of this sub-clause, "print media" means,-

(i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 Of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

Also, the Ministry has clarified vide M.F.(D.R.) letter D.O.F No 334/2006- TRU dated 28.02.2006 as below:

This entry levies service tax on sale of time or space for advertisement excluding sale of space for advertising in print media. Sale of advertising time in television and radio by any person other than broad costing agency or organization is also covered under this sub-clause. Some of the other modes of advertisement covered under this mode are internet advertisement, advertisement on buildings, vehicles etc., advertisement in motion pictures, television serials, video and music albums, mobile phones, ATMs, films and television serials (known as product placement). It may be noted that advertisement in print media is excluded.

26. It is also pertinent to refer the clarification issued by para 4 of F.No. 341/43/96-TRU dated 31.10.1996, which reproduced as below: " *It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisement or gets it done through another person.* ***However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the***

print media (i.e. newspapers, periodicals etc.) or the electronic media (Doordarshan, private TV channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of service tax. *The commission received by the advertising agency would, however, be includible in the value of taxable service"*

27. In their written submissions and personnel hearing the assessee submitted that the publisher or media charges to the agency for the advertisement released on behalf of agency's client and the agency pays to the publisher or media on behalf of its clients. They are entitled to get the same reimbursed on submission of invoices or bills from the clients. They are entitled to get discount or commission @ 15% from publishers or media for publication of advertisement with them. The Assessee charges to its client gross amount including the cost of advertisement i.e. 85% to be paid to publishers or media and discount or commission @ 15% as income for the Assessee. The Assessee has charged service tax on the amount of discounts or commission earned and not on the gross amount charged to its clients in case of advertisement in print media. In case of advertisement in other than print media the Assessee charges service tax on gross amount charged to clients.

28. It has also been clarified in Circular No F.No. 341/43/96-TRU dated 31.10.1996 that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisement or gets it done through another person. However, the amount paid, **excluding their own commission,** by the advertising agency for space and time in getting the advertisement published in the print media (i.e. newspapers, periodicals etc.) or the electronic media (Doordarshan, private TV channels, AIR etc.) **will not be includible in the value of taxable service for the purpose of levy of service tax. The commission received by the advertising agency would, however, be includible in the value of taxable service.**

29. On perusal of the clarification issued by the Board, I find that service tax will be levied on the commission income received by the advertising agency from the service receivers. The impugned Show Cause Notice has been issued on the basis of difference between the figures of ITR/P&L and ST-3 returns submitted by the assessee by alleging that assessee has not paid service tax on certain amount received by the aseessee which was not shown in the ST-3 return but was reflected in the Balance Sheet/ITR. The impugned show cause notice has proposed the demand on the differential amount as shown in the ITR/P&L and ST-3 return. The main clients under to whom the services offered by the assessee in the category of print media are M/s. Bennet Colman & Co Lts, The Sandesh Ltd,, Divya Bhaskar, Lok seva Trust etc. The Board vide Circular No. F.No. 341/43/96-TRU dated 31.10.1996 clarified the taxable amount on which service tax is required to be paid. According to which the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the print media (i.e. newspapers, periodicals etc.) or the electronic media (Doordarshan,

private TV channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of service tax.

30. On perusal of audited balance sheet, ITR, ledger account, copies of invoices and other documents for the FY 2014-15, I find that the total turnover of Rs.3,19,17,834/- is received as total receipts in relation to the advertisement made to various clients on print media. Accordingly out of which Rs. 2,71,30,159/- being income @ 85% is not includable in the taxable income of the assessee. They have paid service tax on Rs.47,87,675/- being 15% commission as the same is taxable and also on Rs.32,75,482/- being other than print media income. The Show Cause Notice proposed to recover service tax on the differential income of Rs.2,61,37,542/- however Rs. 2,71,30,159/-, being 85% income reimbursed to print media, is exempted from payment of service tax which is more than the differential value on which duty demanded. The assessee also explained the reason for the excess amount. According to which they offered trade discounts to the tune of Rs.13,78,683/- for the year 2014-15. Trade discounts are offered by the assesss as adjustments includes the normal trade discounts offered to clients out of assessee"s share of 15% discounts from publications. Further during the year 2014-15 service tax paid Rs.5,94,142/- was added as required by the section 145A of IT Act for the purpose of calculation of income from business/profession. Further there is an excess turnover of S.2,07,033/- shown in ST 3 returns which are those transitions which were either reduced / cancelled /non payment by clients of assessee after the ST3 was filed. Hence the service tax has already been paid on those excess amount as per ST3 but turnover was reduced while auditing under the IT Act. In view of the above facts, I find that the differential value of Rs.2,61,37,542/- on which service tax of Rs.32,30,600/- demanded through the Show Cause Notice is not sustainable and therefore it is required to be dropped.

31. On perusal of audited balance sheet, ITR, ledger account, copies of invoices and other documents for the FY 2015-16, I find that the total turnover of Rs. 2,90,76,811/- is received as total receipts in relation to the advertisement made to various clients on print media Accordingly out of which Rs. 2,47,15,289/- being income @ 85% is not includable in the taxable income of the assessee. They have paid service tax on Rs.43,61,522/- being 15% commission as the same is taxable and also on Rs.8,19,975/- being other than print media income. The Show Cause Notice proposed to recover service tax on the differential income of Rs.2,17,26,504/- however an amount of Rs. 2,47,15,289/- being 85% of the sales income from print media, is exempted from payment of service tax which is more than the differential value on which duty demanded. The assessee also explained the reason for the excess amount. According to which they offered trade discounts to the tune of Rs.29,25,502/- for the year 2015-16. Trade discounts are offered by the assesss as adjustments includes the normal trade discounts offered to clients out of assessee"s share of 15% discounts from publications. Further there is an excess turnover of Rs.63,283/- shown in ST 3 returns which are those transitions which were either reduced / cancelled /non payment by clients of assessee after the ST3 was filed. Hence the service tax has already been paid on those excess amount as per ST3 but turnover was reduced while auditing under the IT Act. In view of the above facts, I find that the differential value of Rs.2,17,26,504/- on which service tax of Rs.31,50,343/- demanded through

the Show Cause Notice is not sustainable and therefore it is required to be dropped.

For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

Sr No	Particulars	FY 2014-15	FY 2015-16
A	Gross Total Turnover as per B/S/ITR	3,42,00,699	2,71,36,481
B	Value declared in ST 3 Returns	80,63,157	54,09,977
C	Differential value (A-B)	**2,61,37,542**	**2,17,26,504**
D	Turnover related to Print Media @ 85% As discussed above	2,71,29,116	2,47,15,289
E	Less: Trade discounts offered by assessee to its clients (out of the 15% commission)	13,78,683	29,25,502
F	Less: Excess turnover shown in ST 3 but not shown in ITR	2,07,033	63,283
G	Add: Service Tax added to turnover for the purpose of audit u/s.145 of IT Act.	5,94,142	0
	Total (D+E+F-G)	**2,61,37,542**	**2,17,26,504**

32. In view of the above discussion and findings and also on perusal of SCN, audited Balance Sheet for the year 2014-15 & 2015-16, ITR , reconciliation statement as well as submissions made by the said assessee, I find that the service tax demand of Rs. 63,80,943/- is not sustainable and accordingly Show Cause Notice dt.29.09.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon the said assessee on this count.

33. In view of the above I pass the following order;

ORDER

34. I hereby order to drop the proceedings initiated for recovery of service tax of Rs. 63,80,943/- along with interest and penalties vide SCN No. STC/15-78/OA/2020 dated 29.09.2020.

11/3/21

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-78/OA/2020
Dated- 11/3/21

To
M/s. Abhivyakti Communications,
3, Sanhath Apartment, 18/A, Swastic Society,
B/h, State Bank of India, Nr. Stadium Cross Road,
Navrangpura, Ahmedabad-380009

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Supdt(system) CGST, Ahmedabad North for uploading on website.
5. Guard File