



<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 &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20221264WT0000111A06

फा.सं./F.No. STC/15-295/OA/2021-22

आदेश की तारीख/Date of Order :- 12.12.2022

जारी करने की तारीख/Date of Issue :- 15.12.2022

द्वारा पारित/Passed by:-

लोकेश डामोर / Mukesh Rathod

सयुक्त आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 78/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 -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

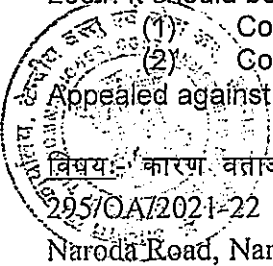
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

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

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

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

विषय:- कारण वताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-295/OA/2021-22 dated 21.10.2021 issued to M/s Amit N Vyas, A/14, Shree Parkash Society, Naroda Road, Naroda, Near Mohan Nagar Opp Multiplex, Ahmedabad, Gujarat-382330.





**BRIEF FACTS OF THE CASE :-**

M/s AMIT N VYAS, A/14, SHREE PRAKASH SOCIETY, NARODA ROAD NARODA, Near Mohan Nagar Opp Multiplex, Ahmedabad -382330,(hereinafter referred to as the 'said assessee' for the sake of brevity) is registered under Service Tax having Registration No.-ABSPV8518MSD001 and were engaged in the business of providing taxable services taxable services.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (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 F.Y. 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:

(Amount in Rs.)

Sr No	F. Y.	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	25718679	78227712	86256797	60538118	9080717

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 (ST-3) Returns for the Financial Year 2016-17, Letters dated 13.08.2021 and subsequent reminders dated 31.08.2021 and 29.09.2021 were issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner.

5. Since the assessee had not submitted the required details or clarifications of differences in Income declared in ITR and STR and as communicated by the CBDT regarding services provided during the Financial Year 2016-17, the service tax liability for the Service Tax 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.

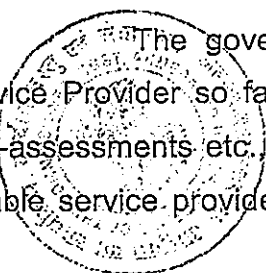
6. No data was forwarded by CBDT, for the onward period 2017-18 (upto June-2017) and the assessee had also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, if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

7. With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

*"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."*

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 had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee had also failed to provide the required information even after the issuance of letter from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) was not ascertainable at the time of issuance of Show Cause Notice. Consequently, if any other amount was disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will 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 2017) under this Show Cause Notice, and due Service Tax will be recoverable from the assessee accordingly.

9. 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



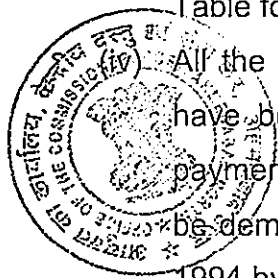
under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service Tax. All these operate on the basis of honesty of the service provider; 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 said assessee 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 here-in-above and the material evidences available on records, it was revealed that M/s AMIT N VYAS, A/14, SHREE PRAKASH SOCIETY, NARODA ROAD NARODA, Near Mohan Nagar Opp Multiplex, Ahmedabad - 382330,- had committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

- (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) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;
- (iii) 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 of 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 have not paid Service Tax as worked out in the Table for Financial Year 2016-17 and 2017-18 (upto June-2017).

All the above acts of contravention on the part of the said assessee appear 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 is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

- (v) All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appears to



be publishable 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, M/s AMIT N VYAS, A/14, SHREE PRAKASH SOCIETY, NARODA ROAD NARODA, Near Mohan Nagar Opp Multiplex, Ahmedabad -382330, has been worked out on the basis of limited data/ information received from the Income tax department for the financial year 2016-17. Thus, the 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/ not deposited Service Tax thereof to the extent of Rs. 90,80,717/- (including Cess). It appeared that the above act of omission on the part of the assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 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 said assessee had appeared for personal hearing, and they requested for more time for clearing out old liabilities. No satisfactory reply/response received from the said assessee. Accordingly, as mentioned in above table, service tax of Rs.90,80,717/- for the period 2016-17 and liability for the financial year 2017-18 (upto June 2017) arise during the course of adjudication was required to be demanded and recovered from the said assessee.

14. Therefore, a Show Cause Notice bearing F.No.STC/15-295/OA/2021 dated 21.10.2021 was issued to M/s AMIT N VYAS, A/14, SHREE PRAKASH SOCIETY, NARODA ROAD NARODA, Near Mohan Nagar Opp Multiplex, Ahmedabad - 382330, to show cause to the Additional / Joint Commissioner, Central Goods and Service Tax, Ahmedabad North having his office situated at 1<sup>st</sup> Floor, Customs House, Opposite Old High Court, Income Tax Cross Road, Navrangpura, Ahmedabad -380009 as to why :

- (i) The Service Tax to the extent of Rs.90,80,717/- (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-2017), ascertained in future, as per paras no. 7 and 8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of 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 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.

#### DEFENCE REPLY :-

15. In response to Show Cause Notice dated 21.10.2021, the said assessee vide letter dated 21.11.2022 submitted that they have been issued a show cause notice bearing F.No.STC/15-142/OA/2020 dated 23.04.2021 for the period 2015-16 and 2016-17 demanding service tax of Rs.55,74,925/- and Rs.1,29,38,519/-, respectively; that the said SCN has been adjudicated vide OIO No.117/ADC/MR/2021-22 dated 31.03.2022; that being aggrieved they filed an appeal before the Commissioner (Appeals) who vide OIA No.AHM-EXCUS-002-APP-14/2022-23 dated 12.07.2022 rejected the appeal; that being aggrieved they have filed an appeal before the CESTAT on 18.10.2022.

16. They further submitted that the SCN dated 21.10.2021 has been issued on the same issue covering the same period i.e. 2016-17 and therefore requested to withdraw the service tax demand of Rs.90,80,717/- under SCN No.STC/15-295/OA/2021 dated 21.10.2021.

#### PERSONAL HEARING :-

17. Personal Hearing in this case has been granted to the assessee on 10.11.2022 and 22.11.2022. Shri Kalpesh R. Patel, Chartered Accountant and

authorized representative appeared for personal hearing on 22.11.2022. He submitted his written submission dated 21.11.22 and requested to drop the SCN.

#### DISCUSSION AND FINDINGS :-

18. 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.

19. 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.

20. I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs.90,80,717/- for the financial year 2016-17 on account of difference between taxable value shown in ST-3 returns vis-à-vis value they had declared in their Income Tax Return (ITR)/ Form 26AS or not.

21. In reply to the show cause notice, the said assessee had submitted that a show cause notice bearing F.No.STC/15-142/OA/2020 dated 23.04.2021 for the period 2015-16 and 2016-17 demanding service tax of Rs.55,74,925/- and Rs.1,29,38,519/-, respectively has already been issued to them and the same has been adjudicated vide OIO No.117/ADC/MR/2021-22 dated 31.03.2022.

22. I have gone through the show cause notice bearing F.No.STC/15-142/OA/2020 dated 23.04.2021 and I find that the said SCN has also been issued to the said assessee on the basis of data received from the Income Tax Department (CBDT). The said show cause notice also covers the period 2016-17. Thus, I find the two show cause notices have been issued to the said assessee for the same period on the same issue as detailed below :

Sr. No.	SCN No. & date	Service Tax demand	Period covered
1	F.No.STC/15-142/OA/2020 dated 23.04.2021	Rs.55,74,925/- Rs.1,29,38,519/-	2015-16 2016-17
2	F.No.STC/15-295/OA/2021 dated 21.10.2021	Rs. 90,80,717/-	2016-17

23. I further find that the show cause notice bearing F.No.STC/15-142/OA/2020, dated 23.04.2021 has been adjudicated vide OIO No.117/ADC/MR/2021-22 dated 31.03.2022 confirming demand of Rs.1,41,85,932/-, dropping demand of Rs.4,69,709 and Rs.38,57,802/- along with recovery of interest under Section 75 of the Finance Act, 1994, imposing penalty of Rs.10,000/- under section 77(2) of the Finance Act, 1994, and imposing penalty of Rs.1,41,85,932/- under Section 78 of the Finance Act, 1994. I further find that being aggrieved the said assessee had filed an appeal



before the Commissioner (Appeals) who vide OIA No.AHM-EXCUS-002-APP-14/2022-23 dated 12.07.2022 had rejected the appeal.

24. In view of the above discussion, I find that the service tax demand for the period 2016-17 is overlapping by two show cause notices issued to the said assessee. I observe that there is duplicacy of demand for the period 2016-17 as two show cause notices covering the same issue and period have been issued. Thus, there is overlapping service tax demand for the period 2016-17. Accordingly, I find that the service tax demand of Rs.90,80,717/- for the period 2016-17 is infructuous and is liable to be vacated. 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.

25. In view of the above, I pass the following order;

### O R D E R

I hereby vacate the proceedings initiated against M/s AMIT N VYAS, A/14, SHREE PRAKASH SOCIETY, NARODA ROAD NARODA, Near Mohan Nagar Opp Multiplex, Ahmedabad-382330 vide Show Cause Notice F.No.STC/15-295/OA/2021 dated 21.10.2021.

26. Accordingly the Show Cause Notice bearing F.No. STC/15-295/OA/2021 dated 21.10.2021 is disposed off.

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

By RPAD  
F.No. STC/15-295/OA/2021

Dt.:- 15/12/2022

To,  
M/s AMIT N VYAS,  
A/14, SHREE PRAKASH SOCIETY,  
NARODA ROAD NARODA,  
Near Mohan Nagar Opp Multiplex,  
Ahmedabad -382330.



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-I, 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.

