



<p>आयुक्तकाकार्यालय, केंद्रीयजी. एस. टी. एवं केंद्रीयउत्पादशुल्क,अहमदाबाद-उत्तर, कस्टमहॉउस,प्रथमतल, नवरंगपुरा,अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोननंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धितपावतीडाकद्वारा/By R.P.A.D
फा.सं./F.No. STC/15-150/OA/2021-22

DIN-20221264WT000000DD02
आदेशकीतारीख/Date of Order :- 20.12.2022
जारीकरनेकीतारीख/Date of Issue :- 26.12.2022

द्वारापारित/Passed by:-

लोकेश डामोर/Mukesh Rathore

सयुक्तआयुक्त / Additional Commissioner

मूलआदेशसंख्या / Order-In-Original No. 79 /ADC/MR /2022-23

जिसव्यक्ति(याँ) कोयहप्रतिभेजीजातीहै, उसके/उनकेनिजीप्रयोगकेलिएमुफ्तप्रदानकीजातीहै।

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 उत्पादशुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूपसंख्या एसटी -४ (ST-4)में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांचरुपये)का न्यायालयशुल्क 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.

उक्तअपील,अपीलकर्ताद्वाराप्रारूपसंख्याएसटी -४ (ST-4) में दोप्रतियों में दाखिल की जानी चाहिए। उसपर 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।

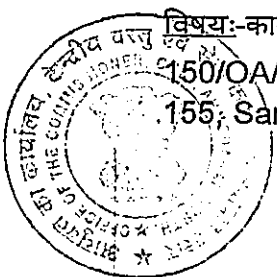
(3) उक्तअपीलकीप्रति।

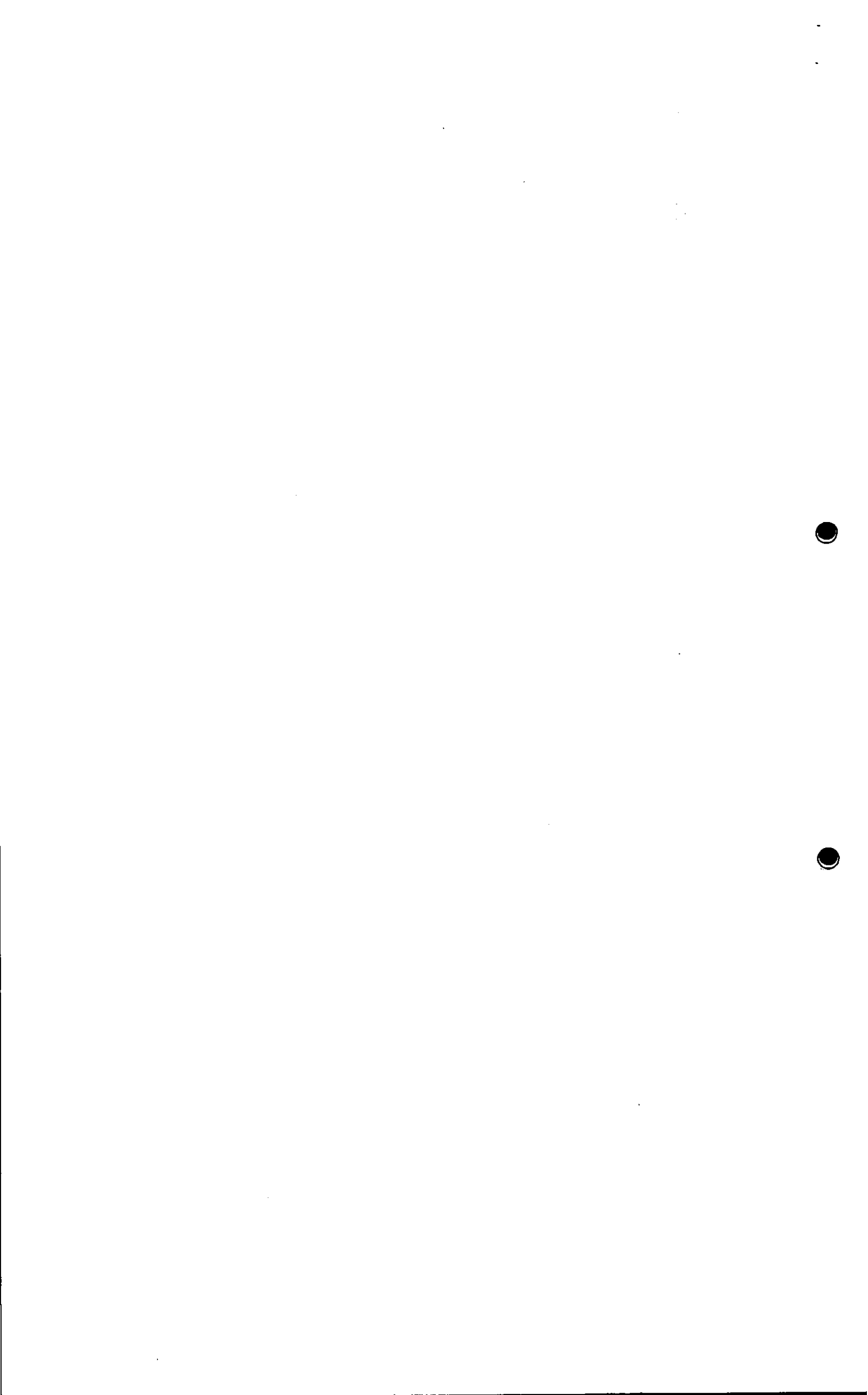
(4) निर्णयकीप्रतियाँअथवाजिसआदेशकेविरुद्धअपीलकीगईहै,उनमेंसेकमसेकमएकप्रमाणितप्रति हो,यादूसरेआदेशकीप्रतिजिसपररु .5) 00.पांचरुपये (कान्यायालयशुल्कटिकटलगाहोनाचाहिए।

The appeal should be filed in form एसटी -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:-कारणबताओसूचना/ Proceeding initiated vide Show Cause Notice F.No.STC/15-150/OA/2021-22 dated 23.04.2021 issued to M/s. K.N.Corporation, Jeevandeep Hospital, 155, Samarthnagar Society, Hansol, Sardarmagar, Ahmedabad-382475.





BRIEF FACTS OF THE CASE

M/s K.N.Corporation (PAN-AAVPT7949Q), Jeevandeep Hospital, 155, Samarthnagar Society, Hansol, Sardarnagar, Ahmedabad-382475 (hereinafter referred to as the "said assessee") is un-registered in Service Tax despite being providing service during the year 2015-16 and 2016-17.

2. On going through the data received from Income Tax Department (CBDT data) for the financial year 2015-16 and 2016-17 for un registered service provider, it was observed that the said assessee had shown "Gross receipt from service in their Income Tax Return", however, the said assessee had neither obtained valid service tax registration nor paid service tax. The details of the value shown in Income Tax Return for the financial year 2015-16 and 2016-17 was as per table mentioned below :-

Financial year	Basic value as per ITR/P&L account (Rs.)	Resultant Service Tax not paid (Rs.)
2015-16	2,89,89,545/-	42,03,484/-
2016-17	2,54,61,561/-	38,19,234/-
	5,44,51,106/-	80,22,718/-

3. Letters/e-mail dated 09.04.2021 was issued requesting clarification regarding the service turnover as mentioned in the above table with certified documentary evidences, but the said assessee had not replied the observations raised by range office with supporting documents till the issuance of the show cause notice.

4. Un quantified demand at the time of issuance of show cause notice Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified 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.'



5. From the facts, it was noticed that the "Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)" for the F.Y. 2017-18 (upto June 2017) has not been disclosed by the Income Tax Department and the said assessee had also, even after the issuance of letters and reminders from the department, not submitted the same. Therefore, the assessable value for the year 2017-18 (upto June 2017) was not ascertainable at the time of issuance of this 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 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) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. As per Section 69 of the Finance Act, 1994 –

(1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

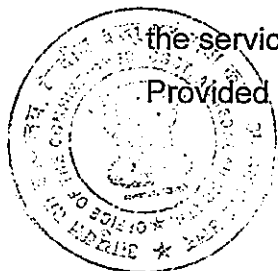
6.1 In the instant case, it appeared that the said assessee had failed to obtain service tax registration and thereby violated the provisions of Section 69 of the Finance Act, 1994.

7. Further, as per Section 68 of the Finance Act, 1994 –

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of

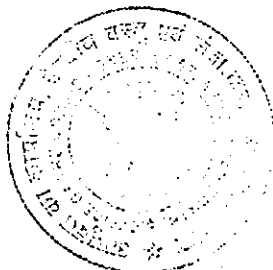


service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

7.1 In this case, the said assessee had failed to pay the service tax on the taxable services provided by them and thereby contravened the provisions of Section 68 of the Finance Act, 1994.

8. In view of the above, it appeared that the said assessee had contravened the provisions of – (1) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and (2) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to take service tax registration and pay service tax to the extent of Rs.42,03,484/- for financial year 2015-16 and Rs.38,19,234/- for financial year 2016-17, as per their income tax return/form 26AS/P&L account.

9. It was noticed that at no point of time, the said assessee had disclosed or intimated to the department regarding receipt/providing of service, which has come to the notice of the department only after going through the CBDT data generated for the financial year 2015-16 and 2016-17. 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. From the evidences, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of providing of services by them. It appeared that the above act of omission on the part of the said 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 of the Finance Act, 1994 by invoking proviso under sub section (1) of Section 73 read with the Notification issued on 27.06.2020 under Section 6 of the Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.3.2020, 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 said assessee constitute offence of the nature specified under Section 68 and Section 69 of the Finance Act, 1994, it appeared that the said assessee had rendered themselves liable for penalty under Section 77(1)(a) and Section 78 of the Finance Act, 1994.



10. The said assessee was given opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 23.04.2021 but the said assessee did not appear for the same.

11. Therefore, a Show Cause Notice bearing F.No.STC/15-150/OA/2021-22 dated 23.04.2021 was issued to M/s K.N.Corporation (PAN-AAVPT7949Q), Jeevandeep Hospital, 155, Samarthnagar Society, Hansol, Sardarnagar, Ahmedabad-382475 to show cause to the Additional Commissioner, CGST & CX, Ahmedabad North having office at 1 Floor, Custom House,. Navrangpura, Ahmedabad as to why:

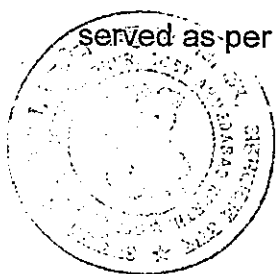
- (a) The demand of service tax to the extent of Rs.42,03,484/- for financial year 2015-16 and Rs.38,19,234/- for financial year 2016-17 not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (b) Interest at appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (c) Penalty should not be imposed upon them under the provisions of Section 77(1)(a) of the Finance Act, 1994, for failure to take service tax registration;
- (d) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994 for non payment of service tax by knowingly suppressing the facts from the department with intent to evade the payment of service tax.

DEFENCE REPLY

12. In response to Show Cause Notice dated 23.04.2021, the said assessee has not filed any reply till date even though they are required to file reply within 30 days of the receipt of the SCN.

PERSONAL HEARING

13. Personal Hearing in this case has been granted to the said assessee on 08.02.2022, 27.04.2022, 10.11.2022 and 22.11.2022. However the said P.H. letters were returned by the postal authroites with the remark "Not known". Therefore, another P.H. notice for 12.12.2022 was issued to the assessee and the same was forwarded to jurisdiction CGST office, Div-I, CGST & CE, Ahmedabad North, however the same was also returned by the concerned office with the remark that " the jurisdictional Range Superintendent visited the assessee to hand over the personal hearing letter and found the premises closed, hence the PH letter could not be delivered". Hence the same was served as per Section 37C(1)(c) of the Central Excise Act, 1944. As the assessee was



given five opportunities of personal hearing, but they neither availed any of these opportunities, nor filed any submissions in response to SCN, I am therefore bound to decide the case on the basis of the available facts on record.

DISCUSSION AND FINDINGS

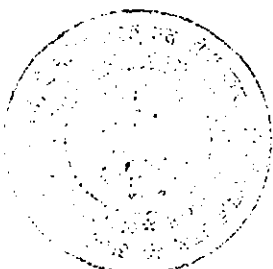
14. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

15. I have carefully gone through the records of the case, SCN and I find that the issue to be decided is to whether the said assessee is liable to pay service tax amounting to Rs.42,03,484/- for financial year 2015-16 and Rs.38,19,234/- for financial year 2016-17 on account of value they had declared in their Income Tax Return (ITR) or not.

16. I have carefully gone through the records of the case and the facts available on record. It is noticed that five opportunities of personal hearing were given to the said assessee, however, they had not availed the same to defend their case. They had also not filed any reply to SCN in this regard. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office.

17. I find that the show cause notice dated 23.04.2021 was sent to the said assessee via speed post on 23.04.2021 and the same has been received by them on 24.04.2021 as can be seen from the Speed Post consignment track which is available in the records. I, therefore find that the show cause notice has been delivered to the said assessee on 24.04.2021.

18. Further, I find that the said assessee is not registered with the department and is having PAN No. AAVPT7949Q and are engaged in the business of providing taxable services without taking registration. In order to verify whether the said assessee had discharged their Service Tax liability properly or not, Jurisdictional Range Officer (JRO) had written letter/e-mail dated 09.04.2021 to the said assessee to provide the details of such services provided by them during the period from 2015-16 & 2016-17. However, the said assessee neither submitted any details /documents explaining such difference nor responded to the letters in any manner. I find that the said assessee had neither taken service tax registration nor filed any ST-3 returns for the period 2015-16 and 2016-17.



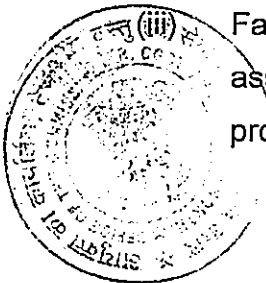
19. The Service tax payable of Rs.42,03,484/- for financial year 2015-16 and Rs.38,19,234/- for financial year 2016-17 (totally amounting to Rs.80,22,718/-) is arrived at on the basis of Gross receipt from service in their Income Tax Return. As per the data, the total value as per Income Tax Return is Rs. 2,89,89,545/- for the FY 2015-16 and Rs. 2,54,61,561/- for the year 2016-17. By considering the said amount as taxable income, the service tax liability of Rs. 80,22,718/- is calculated as tabulated supra.

20. A taxable person is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents to prove that they are not liable to service tax being the service tax provider. The said assessee neither filed any reply to the show cause notice nor attended the personal hearings granted to them. In view of the above facts, it is proved that the said assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may lead to proof that the service provider is liable to pays service tax.

21. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service by not taking service tax registration and not filing ST-3 Returns during the period 2015-16 and 2016-17. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

22. I further find that M/s K.N.Corporation had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 2015-16 & 2016-17:

- (i) Section 69(1) of the Finance Act, 1994 read with Noti.No.33/2012 dated 20.06.2012 in as much as they failed to obtain service tax registration.
 - (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) Failed to register with the Department and failed to declare correctly assessable value and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form

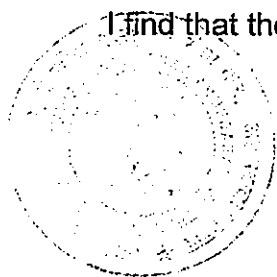


i.e. ST 3 and in such manner and at such frequency, as required under Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994.

- (iv) Section 66B and Section 68 of Finance Act, 1994 and Rule 2&6 of Service Tax Rules, 1994 in as much as they failed to pay service tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision.
- (v) Section 77 of Finance Act, 1994, in as much as failed to take registration.
- (vi) 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. 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 appear to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.
- (vii) 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.

23. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the said assessee has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 on part of the said assessee have rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

24. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assessee is liable to pay the said amount along with interest. Thus, the said

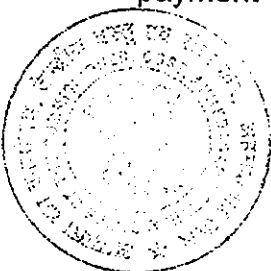


Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

25. As far as imposition of penalty under Section 77(1)(c) of the Finance Act, 1994 is concerned, I find that the said assessee has failed to take service tax registration in accordance with the provisions of section 69 of the Finance Act, 1994. Hence, they have rendering themselves liable to penalty under Section 77(1)(c) of the Finance Act, 1994.

26. 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 not taken service tax registration and not filed ST-3 Returns in respect of the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The said assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence, I find that this is a fit case to impose penalty under Section 78 of Finance Act, 1994.

27. In view of facts stated hereinabove, the Value of Services mentioned/declared in the income tax return for Financial Year F.Y. 2015-16 & 2016-17 is considered as taxable Value of Services provided and since the said assessee has not provided any details/data and the reasons for non-payment of service tax, therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the value of services declared/mentioned in the income tax return filed by the said assessee has been considered for non-payment of total service tax, which comes to Rs.42,03,484/- for financial year 2015-16

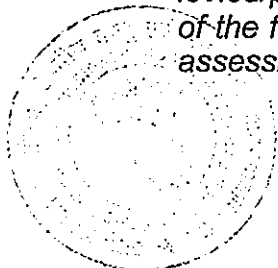


and Rs.38,19,234/- for financial year 2016-17 (totally amounting to Rs.80,22,718/-) (including cess).

28. 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 of Rs.42,03,484/- for financial year 2015-16 and Rs.38,19,234/- for financial year 2016-17 (totally amounting to Rs.80,22,718/-) not paid by the said assessee worked out in Tables supra 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.

29. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The said assessee deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts had come to light.. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of



the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.

12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.

13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the



concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

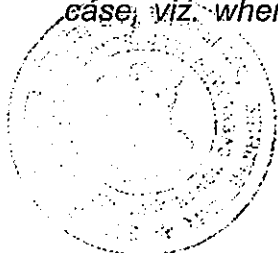
20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of *Rajasthan Spinning and Weaving Mills (supra)* has held thus :

"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priori the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of



the means indicated in the proviso, then the period of notice gets extended to five years."

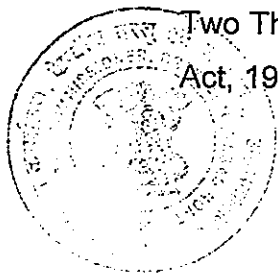
In view of the above facts, the extended period is correctly invoked while issuing the Show Cause Notice

30. On perusal of para 4 & 5 of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I, however, do not find any charges levelled for demand for FY 2017-18 (upto June 2017) in charging part of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income shown in the income tax return. I therefore refrain from discussing the taxability on income other than the income shown in the income tax return.

31. In view of the above discussion and findings, I pass the following order:-

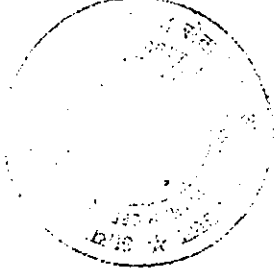
ORDER

1. I confirm the demand of Service Tax of **Rs.42,03,484/-** for financial year 2015-16 and **Rs.38,19,234/-** for financial year 2016-17 (totally amounting to **Rs.80,22,718/-**) (including cess) (Rupees Eighty Lakh Twenty Two Thousand Seven Hundred Eighteen Only), which was not paid/short paid during the Financial Years 2015-16 & 2016-17 as per Table supra and order to recover the same from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
2. 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;
3. I impose penalty of **Rs.10,000/-** (Rupees Ten Thousand only) on M/s K.N.Corporation under Section 77(1)(a) of the Finance Act, 1994
4. I impose Penalty of **Rs.80,22,718/-** (including cess) (Rupees Eighty Lakh Twenty Two Thousand Seven Hundred Eighteen Only), under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the



Finance Act, 1994 if M/s K.N. Corporation 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 K.N. Corporation 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.

32. Accordingly the Show Cause Notice bearing F.No. STC/15-150/OA/2021-22 dated 23.04.2021 is disposed off.



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

BY RPAD
F.No. STC/15-150/OA/2021-22

Dt. 26.12.2022

To
M/s K.N. Corporation,
Jeevandeep Hospital, 155,
Samarthnagar Society,
Hansol, Sardarnagar,
Ahmedabad-382475

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-IV, 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.

