



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, 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- 20220364WT000000CB89

फा.सं./F.No. STC/15-90/OA/2020

आदेश की तारीख/Date of Order :- 21-03-2022

जारी करने की तारीख/Date of Issue :- 21-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम *IR. GULZAR BEGUM*

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 86/ADC/ GB /2021-22**

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

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

(1) उक्त अपील की प्रति।

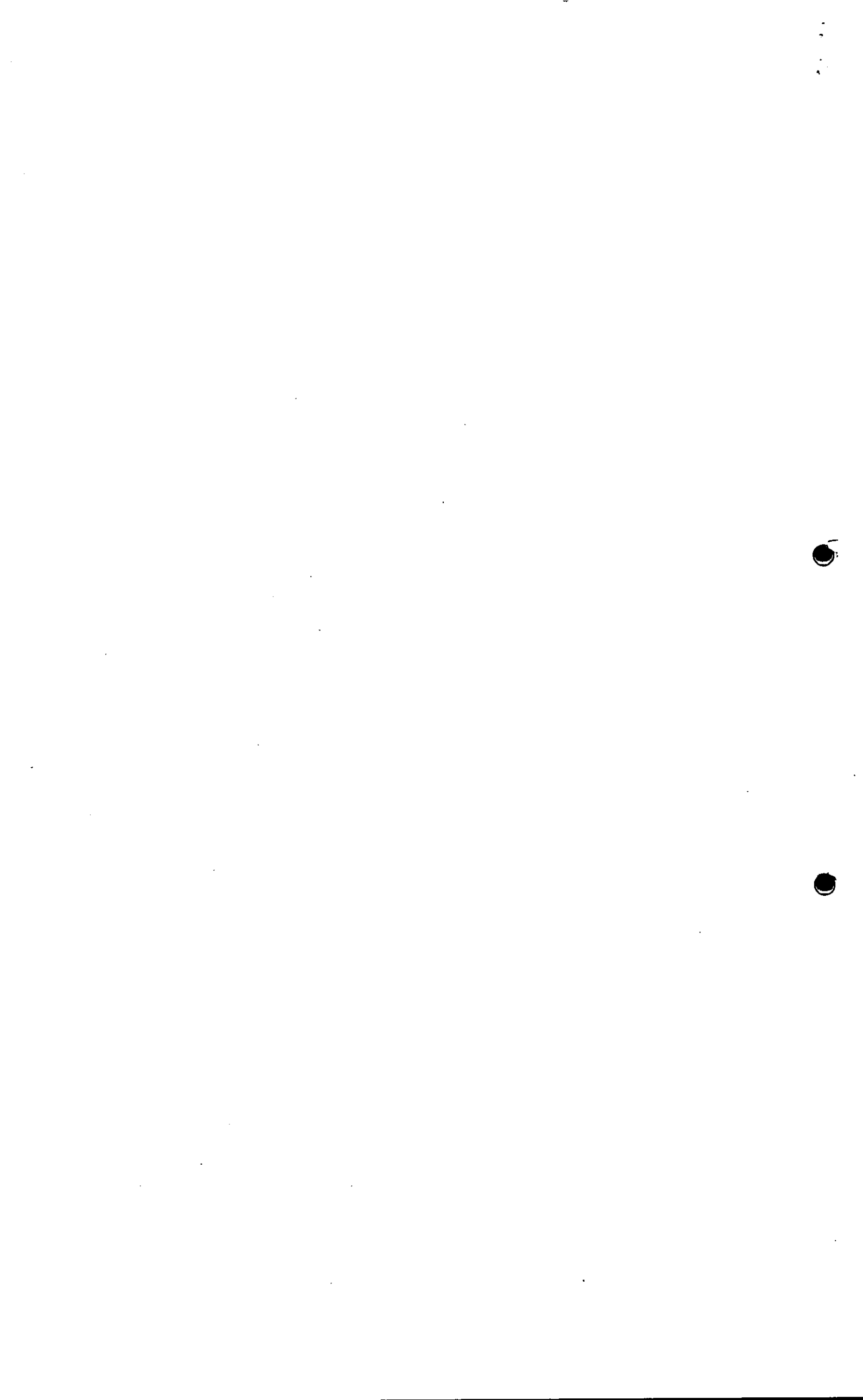
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

(1) Copy of accompanied Appeal.

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

**विषय:-** कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No.STC/15-90/OA/2020 dated 29.09.2020 issued to M/s Dhruvisha Hvac Systems Pvt Ltd., Sambhavnath Shopping Centre 3, Ist Nandishwar Tenament Road, Tulip Bunglows Road, Thaltej, Ahmedabad, Gujarat.



**BRIEF FACTS OF THE CASE :**

**M/s. Dhruvisha Hvac Systems Private Limited**, Sambhavnath Shopping Centre 3, 1st Nandishwar Tenament Road, Tulip Bungalows Road, Thaltej Ahmedabad Gujarat (hereinafter referred to as the Assessee) holding Service Tax registration No.-AADCD7011QSD001.

2. Ongoing through the Third Party CBDT data for the Financial Year 2014-15 and 2016-17 it has been observed that the said Assessee has shown less amount of the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed with Service Tax Department than the 'Sales/Gross Receipts from Services (Value from ITR)', the 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' filed with the Income Tax Department. Therefore, it was observed that the said assessee had mis-declared / suppressed the 'Gross Value of Services Provided' in the Service Tax (ST-3) Returns filed by them and consequently short paid / not paid the applicable Service Tax on whole amount of services provided by them. As per the details shared with the CBIC, is as under-

**Table-I** (Amt. in Rs.)

F. Y.	Value of Services declared in ITR	Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J'	Value of Services provided as per Service Tax Returns	Highest Difference	Service Tax (Including Cess)
2014-15	Rs.32785847/-	Rs.90812/-	Rs.9805912/-	Rs.22979935/-	Rs.2840320/-
2016-17	Rs.7181486/-	Rs.38576338/-	Rs.0/-	Rs.38576338/-	Rs.5786451/-
Total	Rs.39967333/-	Rs.38667150/-	Rs.9805912/-	Rs.61556273/-	Rs.8626771/-

3 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, Letters dated 09.02.2018, 25.06.2019 and 17.07.2020 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. For this reason, no further verification can be done in this regard.

4. In view of facts stated hereinabove, that the total Value of Services declared in ITR filed by the noticee for Financial Year 2014-15 and 2016-17 was Rs.39967333/- and that the Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' for Financial Year 2014-15 and 2016-17 was Rs.38667150/- and whereas the total Value of Services provided as per Service Tax Returns was Rs. 9805912/-. And since the said notice has not provided any details/data for such difference, the reasons for such difference cannot be ascertained and therefore, the exact Service Tax liability cannot be adjudged. Therefore, for calculation and demand of the Service Tax under this notice the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns and (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference of Rs.61556273/- between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax of Rs.8626771/- (Including Cess) for Financial Year 2014-15 and 2016-17 is worked out.

5. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table-I.

6. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter

furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

7. 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, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75 of the Finance Act, 1994.

8. From the foregoing paras and discussion made herein above, it appears that the noticee has contravened the provisions of -

*(i) Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the period 2014-15;*

*(ii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the period 2014-15, to the credit of the Government account within the stipulated time limit;*

*(iii) Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the period 2014-15.*

*(iv) Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.*

9. 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 the noticee 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 noticee appears to have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

10. It has been 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 2016-17. 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.8626771/- (including Cess). It appears 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 appears 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. 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, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994;

11. Therefore, M/s. Dhruvisha Hvac Systems Private Limited called upon to show cause to the Addl. Commissioner, CGST & CX, Ahmedabad North having office at 1st Custom House, Navrangpura, Ahmedabad 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. 8626771/- (Including Cess) (Rupees Eighty Six Lakh Twenty Six Thousand Seven Hundred Seventy One only) short paid /not paid by them, 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 should not be imposed upon them under the provisions of Section 77(1) of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994.
- (v) Penalty under Section 77(2) 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.
- (vi) Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.

#### **Personal Hearing and Defence Submission**

12. Personal hearing in the matter was fixed on 04.10.2021, 22.12.2021, 01.02.2022, 09.03.2022. However, neither the assessee nor any representative on behalf of assessee appeared for personal hearing nor filed any intimation for their non-appearance. They have also not filed any defence submission against the notice.

#### **Discussions and findings: -**

13. 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.

13.1 I have carefully gone through the records of the case and as per the facts available on record I have noted that ample opportunity of personal hearing was given to the said assessee however, they have not availed the same to defend their case. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office.

13.2 I find that the show cause notice was served to the assessee on 30.12.2020 as can be seen from the acknowledgement receipt received from the assessee. A photo of the acknowledgment receipt is displayed below.

## ACKNOWLEDGMENT

RECEIVED SHOW CAUSE NOTICE NO/STC/15-90/OA/2020 DATED 29-09-2020 IN R/O M/S

DHRUVISHARVA SYSTEMS PRIVATE LIMITED

ISSUED BY THE ADDITIONAL COMMISSIONER GST &amp; CX, AHMEDABAD NORTH

ON TODAY'S DATE ON 30-12-2020



13.3 I find that the assessee was given four opportunities of personal hearing on the same address to which the notice was addressed, however, they have not availed the same to defend their case. As the assessee was given four opportunities of personal hearing, but they failed to encash any of this opportunity, nor they filed any submissions, I am therefore bound to decide the case on the basis of the available facts on record.

14.4 As per SCN the said assessee is registered with department and were providing taxable services. On receipt of the data from CDBT, it was noticed that the assessee had declared different values in their Service Tax Returns (ST-3) as compared to the figures mentioned in their Income tax return (ITR/Form 22AS) for the financial year 2014-15 and 2016-17. The assessee had declared less taxable value in their Service Tax return (ST-3) for the financial year 2014-15 and 2016-17 in comparison to the taxable value declared in their ITR/ Form 26AS, and the assessee also failed to submit any documents or details explaining such difference nor responded to the correspondence made in this regard.

14.5 The Service tax payable is arrived at on the basis of value of "sales of services" declared in the ITR-5/26AS for the Financial year 2014-15 and 2016-17. By considering the said amount as taxable income, the service tax liability is calculated. The same is tabulated in Table supra. Since, the assessee has not submitted any reasons to clarify the difference in taxable value, therefore, no further verification could be done in the matter. According to Section 67 of the Finance Act, 1994 as amended from time to time where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider (subject to abatements prevailing) for such service provided or to be provided by him. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Thus, the value to be considered for calculation of service tax is the gross amount charged for providing the taxable services.

14.6 In view of facts stated hereinabove, the Value of Services declared in ITR filed by the assessee for Financial Year 2014-15 and 2016-17 is considered as the taxable Value of Services provided and since the said notice 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 in ITR filed by the notice has been considered for Non-Payment of Total Service Tax, which comes to Rs. 86,26,771/- including cess for Financial Year 2014-15 and 2016-17 as tabulated in the Table.

14.7 It is provided under section 68 of the Finance Act, 1994 that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out above in Table-A.

14.8 As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services provided by him, as discussed above, as they failed to file ST-3 Returns and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

14.9 From the foregoing paras and discussion made herein above, I find that the assessee has contravened the provisions of -

- (i) *Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the SCN period;*
- (ii) *Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the SCN period, to the credit of the Government account within the stipulated time limit;*
- (iii) *Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the SCN period.*
- (iv) *Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.*

15 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 deposed 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 not paid by the assessee worked out in Tablesupra for financial Year 2014-15 and 2016-17, is required to be demanded and 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.

16. 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.

17. I further find that on account of all the above narrated acts of commission and omissions on the part of the service provider, they have rendered themselves liable to penalty under the provisions of the Section 78 Finance Act, 1994, as amended in as much as they have mis-stated the taxable value of the services provided/received by them and they have, knowingly and wilfully not paid the correct amount of Service Tax leviable on such amount.

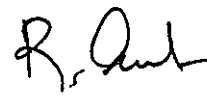
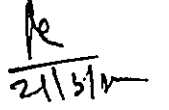
18. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the assessee has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said 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 assessee have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time.

#### ORDER

1. I confirm the demand of Service Tax of Rs. 86,26,771/- including cess, initiated against **M/s. Dhruvisha Hvac Systems Private Limited**, Sambhavnath Shopping Centre 3, 1st Nandishwar Tenament Road, Tulip Bungalows Road, Thaltej Ahmedabad which was short paid during the period from 2014-15 and 2016-17 as per Table supra and order to recover 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 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 only) under the provisions of Section 77(2) of the Finance Act, 1994, as amended, on them for contravention of provisions of the Finance Act, 1994, as explained herein above;
4. I impose Penalty of Rs. 10,000/- (Rupees Ten Thousand only only) under the provisions of Section 77(1) of the Finance Act, 1994, as amended, on them for contravention.
5. I impose Penalty of Rs. 86,26,771/- under Section 78 of the Finance Act, 1994, as amended. if **M/s. Dhruvisha Hvac Systems Private Limited**, Sambhavnath Shopping Centre 3, 1st Nandishwar Tenament Road, Tulip Bungalows Road, Thaltej Ahmedabad pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by **M/s. Dhruvisha Hvac Systems Private Limited** 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.



6. I impose appropriate penalty under Rule 7C of the Service Tax Rules, 1994 for late filing of ST-3 returns.

(R. Gulzar Begum)  
Additional Commissioner,  
Central GST and CX, Ahmedabad North

F. No.STC/15-90/OA/2020

Date: 21/03/2022

By Regd. Post AD./Hand Delivery

To

M/s.-Dhruvisha Hvac Systems Private Limited

Sambhavnath Shopping Centre 3,

1St Nandishwar Tenament Road, Tulip Bungalows Road Thaltej, Ahmedabad Gujarat

Copy for information to:

1. The Commissioner, CGST & Central Excise, Ahmedabad (N)
2. The Dy./Assistant Commissioner, Division-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range- I , Division-VII,CGST& CX, Ahmedabad North
4. The Superintendent, Systems ,CGST& CX, Ahmedabad North for uploading the order
5. Guard File.

