



<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 & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-74/OA/2021

DIN-20240264WT000049434C

आदेश की तारीख/Date of Order: - 23.02.2024
जारी करने की तारीख/Date of Issue :- 23.02.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 86/ADC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

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

Any person deeming himself aggrieved by this order may appeal against this order in form ST-4 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

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

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

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

(1) उक्त अपील की प्रति।

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

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

(1) Copy of accompanied Appeal.

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/15-74/OA/2021 dated 23.04.2021 issued to M/s. Manubhai Shankarlal Patel, A/301, Vishvas City 2, Chandlodiya, Ahmedabad, Gujarat-382481.



BRIEF FACTS OF THE CASE :-

M/s. Manubhai Shankarlal Patel, A/301, Vishvas City 2, Chandlodiya, Ahmedabad, Gujarat – 382481 (hereinafter referred to as “the said assessee” for the sake of brevity) was registered under Service Tax and was having Service Tax Registration No. AEMPP3984NSD001 and was engaged in providing Taxable Services.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the said assessee had declared less taxable value in their Service Tax Return (ST-3) for the FY 2015-16 and 2016-17 as compared to the Service related taxable value they had declared in their Income Tax Return (ITR)/Form 26AS, details of which are as under:-

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (in Rs.)	Gross Receipts from Services(Value from ITR/26AS) (in Rs.)	Difference between Value of Services from ITR/26AS and Gross Value in Service Tax provided (in Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0	49557682	49557682	7185864
2	2016-17	0	65687128	65687128	9853069
Total					17038933

3. Section 68 of the Finance Act, 1994 provided that ‘every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such matter and within such period as prescribed under Rule 6 of the Service Tax Rules, 1994. The said assessee had not paid service tax as worked out for Financial Year 2015-16 and 2016-17.

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

5. 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 appeared that the said assessee had 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 80(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. 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 thereunder, who fails to credit the tax or any part thereof to the account of Central Government within prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee had failed to pay their Service tax liabilities in the prescribed time limit, they were also liable to pay the said amount along with interest. Thus, the said Service Tax was required to be recovered from the said assessee along with interest under Section 75 of the Finance Act, 1994.

7. In view of the above, it appeared that the said assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they failed to pay/short paid/deposit Service Tax to the extent of Rs.17038933/-, by declaring less value in their ST-3 Returns vis-à-vis their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them; Section 70 of the Finance Act, 1994 inasmuch as they failed to properly assess their service tax liability under Rule 2(1)(d) of the Service Tax Rules, 1994.

8. It was noticed that at no point of time, the said 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 2015-16 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 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 above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.17038933/-. 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 the Finance Act, 1994 with intent to evade payment of Service Tax to the extent mentioned above. Hence, the same appeared to be recoverable from the said assessee 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 said assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the said assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. The said assessee was given opportunity to appear for pre-show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

9. Therefore, M/s. Manubhai Shankarlal Patel, A/301, Vishvas City 2, Chandlodiya, Ahmedabad, Gujarat - 382481, vide Show Cause Notice

F.No.STC/15-74/OA/2021 dated 23.04.2021, was called upon to show cause as to why:-

- a) The demand of Service Tax to the extent of Rs.17038933/- short paid/not paid by them in F.Y. 2015-16 and 2016-17, should not be demanded and confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Interest at applicable 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 Section 78 of the Finance Act, 1994;
- d) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for 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

10. The said assessee furnished written reply to the Show Cause Notice issued to them vide their letters dated 24.09.2020, 23.04.2021 and 28.04.2021 (received on 29.04.2021). Vide the said letters, the said assessee provided copies the following documents:-

- i. Contract/agreement dated 27.07.2016 entered into between M/s. Vatsal Construction Co. and the said assessee for construction of (15) additional classrooms in Narmada District – Package No. SSA/ACR/NAR/1382;
- ii. Contract/agreement dated 27.07.2016 entered into between M/s. Vatsal Construction Co. and the said assessee for construction of 21 additional classrooms in Narmada District – Package No. SSA/ACR/VAD/1411;
- iii. Agreement dated 11.07.2014 entered into between M/s. K. R. Savani and State Project Director, SSA Mission, Gandhinagar for construction of classrooms (26 Nos.) at different primary schools in various villages of Narmada District – Package No. SSAM/ACR/NAR/947;
- iv. Agreement dated 14.09.2014 entered into between M/s. K. R. Savani and State Project, SSA Mission, Gandhinagar for construction of (7) additional classrooms & 12 staff quarters in Narmada District – Package No. SSA/ACR/NAR/1001;
- v. Agreement dated 16.05.2015 entered into between M/s. K. R. Savani and State Project Director, SSA Mission, Gandhinagar for construction of (18) additional classrooms in Narmada District – Package No. SSA/ACR/NAR/1115;
- vi. Agreement dated 02.02.2015 entered into between M/s. K. R. Savani and State Project, SSA Mission, Gandhinagar for construction of KGBV in Narmada District – Package No. KGBV-43;
- vii. Agreement dated 03.01.2017 entered into between M/s. K. R. Savani and State Project Director, SSA Mission, Gandhinagar for construction of 20 additional classrooms in Bharuch & Narmada District – Package No. SSA/ACR/BHR-NAR/1512;
- viii. Agreement dated 30.11.2016 entered into between M/s. K. R. Savani and State Project Director, SSA Mission, Gandhinagar for Upgradation of (1) Primary School, (1) Up-gradation of KGBV (1) Repairing of BRC & (1) Repairing of Staff Quarters at Narmada District – Package No. DIR/NAR/UPS/96;

- ix. Agreement dated 18.01.2014 entered into between M/s. Maruti Construction and State Project Director, SSA Mission, Gandhinagar for construction of 20 classrooms (18 nos.) at Different Primary School in Various Village of Vadodara District - Package No. DIR/ACR/VAD/874;
- x. Income Tax Form 26AS for the FY 2015-16 and FY 2016-17.

11. Further, vide their letters dated 23.04.2021 and 28.04.2021 (received on 29.04.2021), the said assessee stated that their firm M/s. Parul Construction (Proprietor Shri Manubhai Shankarlal Patel, the said assessee) had provided service by way of construction of school under SSA Mission Gandhinagar assigned by the government directly or indirectly, which is exempt as per the clause 12A(b) of the Notification No. 25/2012-ST dated 20.06.2012 as amended. The said assessee had acted as a sub-contractor of the main contractors - K R Savani, Dhirajlal Nagjibhai Goeasia, Hitesh Shuklabhai Gaudani and J K Corporation. Principal Contractors had taken the construction work of primary school from government and the same was given to the said assessee for construction as sub-contractor and the same was exempt as per entry no. 29(h) of the above notification. The said assessee stated that they are not covered under Service Tax and requested to withdraw the notice issued to them.

PERSONAL HEARING

12. Personal Hearing in the case was granted on 10.05.2022, 22.06.2022, 29.12.2022 and 19.01.2023. CA Kishor Goyal and CA Pratik Kikani, appeared for PH on 19.01.2023 on behalf of the said assessee and re-iterated their written submission dated 24.09.2020, 23.04.2021 and 28.04.2021. They further stated that the said assessee is engaged in construction of government school buildings. They requested to decide the matter on merit.

DISCUSSION AND FINDINGS

13. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed thereunder are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further to decide the matter on the basis of material available on record and on merits of the case.

14. I observe that after introduction of new system of taxation of services in negative list regime w.e.f. 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification or covered under exclusion clauses provided under the meaning of "service" as per Section 65B(44) of Finance Act, 1944. The term "**Service**" has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as under:

"service" means any activity carried out by a person for another for consideration, and includes a declared service"

The term "**Taxable Service**" has been defined under Section 65B (51) of the Act as under:

"taxable service" means any service on which service tax is leviable under section 66B

Section 66B provides for levy of service tax, which reads as under:

SECTION [66B. Charge of service tax on and after Finance Act, 2012. — There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

(With effect from 01.06.2015, Section 66B was amended to increase the rate of service tax from 12% to 14%)

15. I find that prior to 01.07.2012 i.e. before introduction of a new system of taxation of services, the tax was levied on services of specified description only, as provided under Section 66 (in force at the material time) of the Act. In other words, the service tax was levied on services of specific description provided under the statute. The new taxation system of services had widened the scope of levy of tax on services without specific description of service. Accordingly, any activity carried out by a person for another person in lieu of the consideration is "service" and is liable to service tax unless it is covered under negative list of services or exempt services under mega exemption notification or covered under exclusion clauses of "service".

16. As per the Show Cause Notice, the said assessee was registered with department and was having the Reg. No. AEMPP3984NSD001 and had failed to pay/short paid Service Tax of Rs.1,70,38,933/- for the FY 2015-16 and FY 2016-17. In the instant case, the Service tax demand of Rs. 1,70,38,933/- is arrived at on the basis of third party data received from CBDT. As per the SCN issued on the basis of above data received from CBDT, the said assessee had not paid/short paid Service Tax of Rs. 1,70,38,933/-. Summary of the same is given below:-

Sr. No.	F.Y.	Taxable Value as per ST-3 returns (in Rs.)	Gross Receipts from Services(Value from ITR/26AS) (in Rs.)	Difference between Value of Services from ITR/26AS and Gross Value in Service Tax provided (in Rs.)	Resultant Service Tax short paid (in Rs.)
1	2015-16	0	49557682	49557682	7185864
2	2016-17	0	65687128	65687128	9853069
Total					17038933

17. I have gone through the material available on record and written submission made by the said assessee. I find that amount of Rs. 2,47,78,841/- and Rs. 3,28,43,564/- was paid/credited to the said assessee by the following parties in FY 2015-16 and FY 2016-17 respectively as detailed in tables below:-

Amount in Rs.

Name of deductor	TAN of deductor	Amount paid/Credited
JK Corporation	AHMJ03810C	34,08,631
K R Savani	AHMK03000E	2,13,70,210
Total FY 2015-16		2,47,78,841
Dhirajlal Nagjibhai Gorasia	AHMD02035F	70,27,185
Hitesh Sukhlalbai Gaudani	AHMH01730B	2,38,16,379
K R Savani	AHMK03000E	20,00,000
Total FY 2016-17		3,28,43,564

18. I find that the amount reflected in Show Cause Notice is higher than the amount given in Form 26AS furnished by the said assessee and amount reflected in SCN is not correct. Accordingly, I rely on the Form 26AS furnished by the said assessee. Amount paid/deposited to the said assessee as per the Form 26AS provided by the said assessee comes to Rs. 2,47,78,841/- and Rs. 3,28,43,564/- in FY 2015-16 and FY 2016-17 respectively.

19. On going through the documents/details provided by the said assessee, it was found that the said assessee had not provided the following documents/details in respect of their claim for exemption under Notification No. 25/2012-ST dated 20.06.2012 as amended:-

- i. Copies of Agreement/Contract entered into between the said assessee and (i) M/s. J K Corporation, (ii) K R Savani and (iii) Dhirajlal Nagjibhai Gorasia, in support of their claim that they had acted as sub-contractor for these principal contractors.
- ii. Copies of main work orders/contracts received by main contractors [i.e. contract/agreement entered into between the main contractors and work order issuing authority] (i) M/s. J K Corporation, (ii) Dhirajlal Nagjibhai Gorasia and (iii) Hitesh Sukhlalbai Gaudani.

20. Accordingly, letters dated 04.01.2024 and 05.02.2024 were issued to the said assessee requesting them to provide the above documents in support of their claim for exemption under Notification No. 25/2012-ST dated 20.06.2012 as amended. However, the said assessee did not provide the required documents.

21. The said assessee failed to provide documents in support of their claim for exemption under Notification No. 25/2012-ST as amended. I find that Hon'ble High Court of Kerala in the case of United Mills vs. Collector of Customs & C.Ex., Cochin (reported in 2000 (124) E.L.T. 53 (Ker.) has held that where full opportunity is given to produce evidence, principle of natural justice is not violated. Relevant portion of the said decision is reproduced below:-

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

22. I have carefully gone through the records of the case. I find that the said assessee have not provided any documents in support of their claim for exemption despite specifically seeking these details vide letters dated 04.01.2024 and 05.02.2024. Accordingly, I proceed to decide the case on the basis of material available on record and on merits.

23. A taxable person is required to provide information/documents to the department as and when required. However, in this case the said assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider. In view of these facts, it is proved that the said assessee might have been trying to avoid furnishing the details which may have lead to prove that the said assessee were liable to pay service tax.

24. Further, they had wrongly claimed that they are eligible for benefit of exemption Notification No. 25/2012-ST dated 20.06.2012 despite not being eligible for the same as they failed to provide any document in support of their claim for exemption. They also did not seek any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services. In view of the specific omissions and commissions as elaborated in the Show Cause Notice dated 23.04.2021, it is apparent that the said assessee had deliberately suppressed correct value of Taxable Service from the department during the relevant period. Consequently, this amounts to wilful suppression of facts with the deliberate intent to evade payment of Service Tax.

25. Further the onus is on the assessee to prove that they are eligible for any exemption Notification. In this connection the Hon^{ble} Supreme Court of India in the case of Commissioner of Central Excise New Delhi Vs. Hari Chand Shri Gopal reported in 2010(260) ELT 3 (SC) clarified that the person claiming exemption or concession has to establish that he is entitled to that exemption or concession. The relevant portion of the order is reproduced as under:

"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exemption or concession provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption." . Here in the instant case the said assessee failed to prove that they are eligible for the exemption Notifications.

26. In view of facts stated hereinabove, the Value of Services and Service Tax payable is derived on the basis of Form 26AS provided by the said assessee. I find that the said assessee had evaded Service Tax of Rs. 85,19,467/- as detailed in table below:-

Name of deductor	TAN of deductor	Amount paid/Credited (Rs.)	Service Tax Payable (Rs.)
JK Corporation	AHMJ03810C	34,08,631	4,94,252
K R Savani	AHMK03000E	2,13,70,210	30,98,680

Total FY 2015-16		2,47,78,841	35,92,932
Dhirajlal Nagjibhai Gorasia	AHMD02035F	70,27,185	10,54,078
Hitesh Sukhlalbhair Gaudani	AHMH01730B	2,38,16,379	35,72,457
K R Savani	AHMK03000E	20,00,000	3,00,000
Total FY 2016-17		3,28,43,564	49,26,535
Total FY 2015-16 and FY 2016-17		5,76,22,405	85,19,467

27. 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. On the basis of investigation done by department on the basis of third party data received from CBDT, it appeared that the said assessee had not discharged service tax liability correctly. 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 correct 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. 85,19,467/- (inclusive of SBC and KKC) not paid by the said assessee as worked out above table 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.

28. I further find that the said assessee had contravened various 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 April 2015 to March 2017.

29. 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 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 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 68 of the Finance Act, 1994, as amended from time to time read with Rules 6 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.

30. Further, as per provisions of Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the said assessee 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 said assessee along with interest under Section 75 of the Finance Act, 1994.

31. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77(2) of the Finance Act, 1994. The said assessee had 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.

32. As far as imposition of penalty u/s.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 the said assessee failed to pay the correct amount of Service Tax with intent to evade the same. It is also a fact that they had deliberately not shown correct value of taxable services to the department and service tax involved thereon, with intent to evade the payment of service tax. Had there been no investigation by the officers of the department, the service tax evasion would not have been detected. They had never informed the Service Tax department about the correct value of taxable services provided by them to their service recipients during the relevant time and they had also not shown the aforesaid correct value of taxable service provided by them, in respective ST-3 returns filed by them for the relevant period. The said assessee have thus, willfully suppressed the correct value of services provided by them and service tax payable thereon with intent to evade the Service Tax. It, thus, is found that the said assessee, as a service provider, deliberately suppressed the correct value of the taxable services provided by them and service tax payable thereon, 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 u/s.78 of Finance Act,1994.

33. 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 had deliberately suppressed value of taxable services and service tax payable thereon, with intent to evade the payment of Service Tax. These facts would not have come to light if there had been no investigation against the said assessee. 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, non payment, 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."

34. In view of the above facts and findings I find that M/s. Manubhai Shankarlal Patel are liable to pay Service Tax of Rs. 85,19,467/- (Rupees Eighty Five Lakhs Nineteen Thousand Four Hundred Sixty Seven only) (inclusive of Swachh Bharat Cess and Krishi Kalyan Cess) along with applicable interest under Section 75 of the Finance Act, 1994 and penalty under Section 77(2) and Section 78 of the Finance Act, 1994. Accordingly, I pass the following order.

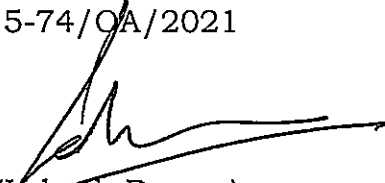
ORDER

- (i) I confirm the demand of Service Tax of Rs. 85,19,467/- (Rupees Eighty Five Lakhs Nineteen Thousand Four Hundred Sixty Seven only) (inclusive of Swachh Bharat Cess and Krishi Kalyan Cess), which was not paid/short paid by M/s. Manubhai Shankarlal Patel, for the period from April, 2015 to March, 2017, as discussed in forgoing paras and order to recover the same from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017;
- (ii) I drop the demand of Service Tax of Rs. 85,19,466/- (Rupees Eighty Five Lakhs Nineteen Thousand Four Hundred Sixty Six only) (inclusive of Swachh Bharat Cess and Krishi Kalyan Cess) as discussed in foregoing paras;
- (iii) 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 34 (i) above under Section 75 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017;
- (iv) I impose Penalty of 85,19,467/- (Rupees Eighty Five Lakhs Nineteen Thousand Four Hundred Sixty Seven only), under Section 78 of the Finance Act, 1994, as amended on M/s. Manubhai Shankarlal Patel, I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Manubhai Shankarlal Patel, pay the amount of Service Tax as determined at Sl. No. 34 (i) above and interest payable thereon at 34 (iii) above within thirty days of the date of communication of this order, the amount of penalty liable to be

paid by M/s. Manubhai Shankarlal Patel, 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.

- (v) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Manubhai Shankarlal Patel, under Section 77(2) of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and Services Tax Act, 2017;

35. Accordingly the Show Cause Notice F.No.STC/15-74/OA/2021 dated 23.04.2021 is disposed of.


(Lokesh Damor)

Additional Commissioner
Central GST and Central Excise
Ahmedabad North

F.No. STC/15-74/OA/2021

Dt:23.02.2024

To

M/s. Manubhai Shankarlal Patel
A/301, Vishvas City 2, Chandlodiya,
Ahmedabad, Gujarat - 382481.

Copy to:

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

