OFFICE OF THE COMMISSIONER OF C. G. S. T.,
AHMEDABAD – SOUTH.
प्रधान आयुक्त का कार्यालय, के. व. से. क., अहमदाबाद दक्षिण
G. S. T. BHAVAN, AMBAWADI, AHMEDABAD – 380 015
व. से. क. भवन, आम्बावाड़ी, अहमदाबाद – ३८० ०१५

F.No.: STC/4-14/O&A/Jayraj/21-22
DIN: 20221171MN0000111ED1

आदेश की तारीख: Date of Order : 16.11.2022
जारी करने की तारीख: Date of Issue : 16.11.2022

द्वारा पारित / Passed by: ***Shri Marut Tripathi,*** *JOINT COMMISSIONER*
****

*मूल आदेश सं./****Order-In-Original No.33/CGST/Ahmd-South/JC/MT/22-23***
****

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिएयह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए नि:शुल्क प्रदान की जाती है ।

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

यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त (अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आंबावाड़ी, अहमदाबाद–15 को प्रारूप इ.ए.–1 में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए 2.00/- केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form E.A.1 to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं. इ.ए.-1/S.T.-4 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. E.A.-1/S.T.-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:
उक्त अपील की प्रति ।
Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।
Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरूद्ध आयुक्त(अपील) में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुकतान करके अपील की जा सकती है ।
An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

सदर्भ/Reference :कारण बताओ सूचना फा.सं. F.No.: STC/4-14/O&A/Jayraj/21-22, issued to To,
M/S. Jayraj Shanmugam Pallar,A-9, Aryavrat Bunglow,Govt.Ware House, Bareja, Ahmedabad- 382425

1. BRIEF FACTS OF THE CASE

1.1. Whereas, M/s JAYRAJ SHANMUGAM PALLAR, A-9, ARYAVRAT BUNGLOW, GOVT.WARE HOUSE, BAREJA, AHMEDABAD-382425, (hereinafter referred to as the 'Service Provider' for the sake of brevity) is registered under Service Tax having Registration No.-ALRPP5031EST001.

1.2. As per the information received from the Income Tax Department, M/s Jayraj Shanmugam Pallar had earned substantial service income, however, however, they have not paid service tax on actual sale of services thereon.

1.3. Therefore, The clarification along with documents related to service income for the period 2015-16 to June-2017 were called for from the Service Provider for assessment purpose, vide letter dated 27.01.2020 and 28.09.2020 and summon dated 01.04.2021. However, the said Service Provider failed to submit the required details/documents or offer any explanation/clarification regarding income earned by them.

1.4. Further, the Income Tax Department shared the data for the Financial Year 2015-16 and 2016-17. As per the data provided by the Income Tax Authority, income earned by the said Service Provider is as under:-

Sr. No.	Period (Fin. Year)	Income earned in Rs.	Business description (Service Sector)
1	2015-16	37323921/-	Service Sector [Transporters]
2	2016-17	22769866/-	

However, no return has been filed by them for the period October-2015 to March-2016.

2. LEGAL PROVISION

2.1. According to Section 70 of the Finance Act, 1994 read with Rule 7(1) of the Service Tax Rules, 1994, *every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all materials facts in ST-3 returns.*

2.2. As per provision of Section 68 of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, *every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66B to Central Government by the 5th of the month/ quarter immediately following the calendar month/ quarter in which the taxable service is deemed to be provided (except for the month of March which is required to be paid on 31st March).*

3. OBSERVATIONS

3.1. Since the said Service Provider had failed to submit the required details of services provided during the Financial Year 2015-16 to June-2017 till date, the service tax liability of the Service Provider was required to be ascertained on the basis of income mentioned in the ITR returns and Form 26-AS filed by the said Service Provider with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the service tax liability under Section 67A of the Finance Act, 1994 as the said Service Provider failed to determine the correct taxable value.

3.2. The Service tax payable is calculated on the basis of value of "sales of services under Sales/Gross Receipts from Services (Value from ITR)" as provided by the Income Tax Department for the Financial Year 2015-16 and 2016-17. By considering the said amount as taxable income, and as the said Service Provider failed to submit the required details as per above referred letter, the service tax liability is calculated as under:-

Table-A

F.Y	Taxable Value as per ITR	Value declared in ST-3	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194H)	HIGHER VALUE(VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Service Tax (at 14.5% for 2015-16 and 15% for 2016-17) payable
2015-16	37323921	0	6256506	37323921/-	5411968/-
2016-17	22769866	0	6389834	22769866/-	3415479/-
				Total	**8827447/-**

3.3. It appeared that the said Service Provider had neither filed a correct Service Tax ST-3 return for the services provided by them for the period of F.Y. 2015-16 and 2016-17, nor responded to correspondence made with them and concealed the value from the department, declared to the income tax department. Therefore, it appeared that the said Service Provider had not paid correct service tax by way of wilful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs.**88,27,447/-** is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 77 and 78 of Finance Act, 1994.

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

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

3.5. From the data received from CBDT, it apeared that the **"Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)"** for the Financial year 2017-18 (upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the service provider has also failed to provide the required information even after the issuance of letters/summon from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is 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 service provider, action will be initiated against the said service provider 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 2015-16, 2016-17 and 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the service provider accordingly.**

4. PENAL ACTION

4.1. It further appeared that on account of all the above narrated acts of commission and omissions on the part of the said service provider, they have rendered themselves liable to penalty under the following proviso of the Finance Act, 1994 and Rules framed there under:-

- Section 70 and Section 77 of the Finance Act, 1994 as amended in as much as they failed to correctly self assess the tax due on the services provided and have not filed/not filed correct ST-3 return and contravened the provisions of Service Tax laws and did not comply to the letter issued by the Department and did not provide the required information/documents.

- Section 78 of the Finance Act, 1994, in as much as they have suppressed the material facts from the department about service provided and value realized by them with intent to evade payment of service tax.

4.2. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the Service Tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the Service Tax on the Service Provider. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:-

> *"Assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."*

4.3. In view of discussion in the fore going paras, it apeared that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of said service provider that they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs. **88,27,447/-** (Non-payment of Service Tax for the period 2015-16 and 2016-17 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it apeared that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs. **88,27,447/-** (including EC, SHEC, SBC & KKC) for the period 2015-16 and 2016-17 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

5. Therefore, M/S JAYRAJ SHANMUGAM PALLAR, A-9, ARYAVRAT BUNGLOW, GOVT.WARE HOUSE, BAREJA, AHMEDABAD-382425 were called upon vide Show Cause Notice F.No.: STC/4-14/O&A/Jayraj/21-22 dated 22.04.2021, to show cause to the Joint Commissioner, Central GST, Ahmedabad South having his office situated at 7th Floor, GST Bhavan, Revenue Road, Ambawadi, Ahmedabad-380015 as to why:-

i) Service Tax of **Rs. 88,27,447/- (Eighty Eight Lacs Twenty Seven Thousand Four Hundred Forty Seven)** which was not paid for the F.Y.2015-16 and 2016-17 as per Table-A in para-8 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;

ii) Interest at the prescribed rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at above under Section 75 of the Finance Act,1994;

iii) Prescribed late fee, should not be recovered from them for each S.T.-3 return filed late, for the relevant period, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 and

iv) Penalty should not be imposed under Section 77 of the Finance Act, 1994

v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by wilfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

6. DEFENCE REPLY

6.1 The said service provider submitted certificate in respect of M/s. Kamakshi Roadways (Proprietor Shri Jayaraj Samugam Pallar) dated 08.11.2022, certified by Maulik Trivedi & Associates (Chartered Accountants) which certify that M/s. Kamakshi Roadways (Proprietor Shri Jayaraj Samugam Pallar) PAN: ALRPP5031E having office address; A-9, Aryavart Bunglows, Dascroi, Bareja, Ahmedabad-382475 doing Business of Goods Transport Agency (GTA) and also certify their Freight Booking Details as under;

S. No.	Period	Particulars	Amount in Rs
1	2015-16	Freight Booking with Body Corporate	1,57,19,827.00
2		Freight Booking with Partnership Firms	1,76,42,319.00
3		Freight Booking with Transporters	30,99,250.00
4		Freight Booking Others	8,62,525.00
Total Amount of Freight Charges for F. Y. 2015-16			**3,73,23,921.00**
5		Freight Booking with Body Corporate	93,16,384.00
6		Freight Booking with Partnership Firms	62,81,663.00
7		Freight Booking with Transporters	66,37,356.00
8		Freight Booking Others	5,37,163.00
Total Amount of Freight Charges for F. Y. 2016-17			**2,27,69,866.00**

6.2 They have also submitted copy of Freight Register for the F.Y. 2015-16 and 2016-17, various Financial statements like P&L A/c, Balance Sheet, Form 26AS etc. and Tax Audit report for F.Y. 2015-16, 2016-17. However, the assessee has failed to produce consignment note/ lorry receipt.

7. RECORD OF PERSONAL HEARING

7.1 Shri Suresh Maheshwari, Tax Practitioner on behalf of said service provider appeared for personal hearing on 17.10.2022 and stated that party owns trucks and hires trucks and they have nothing more to state.

8. DISCUSSIONS & FINDINGS

8.1 I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice and also during the course of personal hearing, Audited Balance Sheet, ITR, Form 26AS, copies of freight ledger/accounts for the year 2015-16 to 2016-17.

8.2 Briefly stated the facts of the case are that as per the information received from the Income Tax Department, the said service provider has earned substantial service

income. However, he did not pay service tax on actual sale of services thereon the details of which are shown as under:

Sr. No.	Period (Fin. Year)	Income earned in Rs.	Business description (Service Sector)
1	2015-16	3,73,23,921/-	Service Sector [Transporters]
2	2016-17	2,27,69,866/-	

8.3 On the basis of above details the department has worked out the service tax liability as under:

F.Y	Taxable Value as per ITR	Value declared in ST-3	TOTAL VALUE for TDS(including 194C,194Ia,194Ib,194J,194H)	HIGHER VALUE(VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Service Tax (at 14.5% for 2015-16 and 15% for 2016-17) payable
2015-16	37323921	0	62,56,506/-	3,73,23,921/-	54,11,968/-
2016-17	22769866	0	63,89,834/-	2,27,69,866/-	34,15,479/-
				Total	**88,27,447/-**

8.4 In the present case, Show Cause Notice has been issued to the assessee demanding Service Tax of Rs. **88,27,447/-** for the financial year 2015-16 to 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 76, 77 and 78 of the Finance Act, 1994.

8.5 The assessee has informed that they are in the business of providing "Goods transport Agency Service" in which they are not liable to collect service tax as per Notification No.30/2012-ST dated 20.06.2012. The service receiver is liable to pay service tax on Reverse Charge Mechanism. Major portion of the customers were registered parties, so the service recipient were liable to pay service tax. So they were not liable to pay tax on the whole amount of services provided to registered persons.

8.6 However, it is observed that the assessee has not submitted any copy of Lowry Receipt/Consignment Note in respect of services provided by them therefore, it is not clear which service they were providing to their service recipient and as to whethersuch service attracts Service Tax under Reverse Charge mechanism or otherwise.

8.7 Now I would like to go through the legal aspects of the taxability of GTA services. Rule 2(d)(B)(V) of the Service Tax Rules, 1994 provided that;

(d) "person liable for paying service tax", -
(i) (B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road,
where the person liable to pay freight is,—
(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
(III) any co-operative society established by or under any law;
(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;

(V) any body corporate established, by or under any law; or
(VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage: Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

8.8 Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

In the instant case, the assessee failed to produce consignment note/ lorry receipt or any other supporting documents in their favour. Therefore, the benefit of the exemption notification for the services provided to body corporate and partnership firms by the assessee cannot be extended without fulfillment of legal requirements, without undertaking necessary verification, without appreciation of requirements and fulfillment of legal provisions.

8.9 As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, Service Tax on

GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under is payable in RCM by the service recipient. I find that the status of the service recipient as body corporate and the partnership firm can be verified by checking fourth digit of PAN. The assessee has provided PAN-wise details of service recipient in their Freight Register for the period of 2015-16 and 2016-17. However, it is also pertinent to note that no undertaking/agreement have been submitted by the service provider in respect of nature of service rendered, hence in absence of any such undertaking or any proof that shows that the service recipient i.e. body corporate or partnership firms are discharging service tax under RCM for the services provided by M/s. Jayraj Shanmugan Pallar.

8.10 From the above, I have noted that the assessee has claimed that they were providing GTA service to various body corporate and partnership firms which is exempted from payment of service tax exemption under Notification No. 30/2012-ST which deals with a payment of service tax at the end of service receiver on reverse charge mechanism. They have rented vehicles to other transporters which is exempted from payment of service tax under Notification 25/2012-ST. In this regard, vide letter dated 15.10.2022 the service provider has submitted the details of freight register for the period under dispute showing the details of consigner, consignee, PAN No., L.R. No. and Freight Receipt. The assessee further submitted Form 26AS for the F.Y. 2015-16 and F. Y. 2016-17 vide email dated 11.11.2022.

8.11 However, they failed to submit copies of LR/Consignment Note for F.Y. 2015-16 and F. Y. 2016-17 to this office therefore LR/Consignment Note could not be examined for F.Y. 2015-16 and F. Y. 2016-17. Hence, I deny the exemption for the entire amount of said service provided by the Service Provider to their recipients. Thus, as per the details produced by service provider, the value of such service for the year 2015-16 and 2016-17 comes to Rs.**3,73,23,921**/-, and Rs.**2,27,69,866**/- respectively. I hold that entire amount of Rs. **6,00,93,787/-** is liable for payment of service tax without any benefit of either abatement of exemption to the service provider.

8.12 It is noticed that the assessee had not provided any sales ledger/register for the period of 2015-16 and 2016-17 to the investigating authority hence demand of service tax was calculated by the Show Cause Notice issuing authority at rate of 14.5% for the F.Y. 2015(Rs.54,11,958/-) and at the rate of 15% for the F.Y. 2016-17(Rs.34,15,479/-) which comes to **Rs.88,27,447/-**. However, during the adjudication, the assessee has provided freight receipt register for the F.Y. 2015-16 and F.Y. 2016-17. Liability of Service Tax has been re-calculated as per the freight receipt register provided by the assessee which comes to **Rs. 85,48,867/-** (Rs. 2,78,580/- less than the demand made in Show Cause Notice). The service tax liability is worked out as under:

Year	Period as per lorry receipt	Value of Service	Rate of service tax %	Tax Liability
2015-16	01.04.15 to 31.05.15	8555616	12.36%	1057474.14
	01.06.15 to 14.11.15	16593572	14%	2323100.08
	15.11.15 to 31.03.16	12174733	14.50%	1765336.29
	Total Amount in Rs.	**37323921**		**5145911**
2016-17	01.04.16 to 31.05.16	2504701	14.50%	363181.65
	01.06.16 to 31.03.17	20265165	15%	3039774.75
	Total Amount in Rs.	**22769866**		**3402956**
Sub- total (Amount in Rs.)		**6,00,93,787/-**		**85,48,867/-**

8.13 It is on record that from the data received from CBDT, it appears that the **"Total Amount Paid/Credited Under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts From Services (From ITR)"** for the Financial year 2017-18 (upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the service provider has also failed to provide the required information even after the issuance of letters/summon from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is 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 service provider, action will be initiated against the said service provider 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 2015-16, 2016-17 and 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the service provider accordingly.**

8.14 I observe that the said Service Provider had neither filed a correct Service Tax ST-3 return for the services provided by them for the period of F.Y. 2015-16 and 2016-17, nor responded to correspondence made with them and concealed the value from the department, declared to the income tax department. Therefore, it is observed that the said Service Provider had not paid correct service tax by way of wilful suppression of facts to the department in contravention of provision of the Finance Act, 1994 relating to levy and collection of service tax and the Rules made there under, with intent to evade payment of service tax. Therefore, the service tax amounting to Rs.**85,48,867/-** is recoverable from them by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and also rendered himself liable for penal action under Section 77 and 78 of Finance Act, 1994.

8.15 I observe that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of said service provider that

they have willfully suppressed the facts, nature and value of service provided by them by not assessing and paying due Service Tax liability, therefore, the above said amounts of Service Tax of Rs.**85,48,867/-** (Non-payment of Service Tax for the period 2015-16 and 2016-17 on Income from taxable service provided by them), and Late fee (Non filing of Service Tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras. In view of the facts discussed in foregoing paras and material evidence available on record, it appears that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs. 8827447/- (including EC, SHEC, SBC & KKC) for the period 2015-16 and 2016-17 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

8.16 In view of the above, the assessee is liable to pay service tax of Rs.**85,48,867/-**for the period of 2015-16 and 2016-17 alongwith applicable interest.

9. Late Fee

9.1 Coming to the matter of late fee I have noted that the said service provider have not filed ST-3 Returns for the period of 2015-16 and 2016-17. Hence they are liable to pay prescribed late fee, for each ST-3 return filed late, for the relevant period, whenever they file ST-3 returns, under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

10. PENAL ACTION

10. 1 As regard penal action under Section 77 of the Finance Act, 1994, there is no submission on the part of service provider as against the proposal made in the SCN issued. As per the facts available on record, I have noted that clarification along with documents related to service income for the period from 2015-16 to June-2017 were called for from the Service Provider for the purpose of verification However, the said Service Provider failed to submit the required details/documents or offer any explanation/clarification with respect to the income earned by them and, accordingly, violated the provision of the Section 77(c) of the said Act. Hence, they are liable to penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance. As already pointed out above, the noticee initially was asked to submit the details vide letter dated 27.01.2020 but it is not on record as to by which date the same becomes due. However, thereafter vide letter dated 28.09.2020 the department has issued reminder followed by summons dated

01.04.2021. Therefore, inference about the due date of submission of details/documents can be drawn as date preceded to the date of issuance of reminder dated 28.09.2020. In the instant matter, I have noted that till the date of issuance of SCN on 22.04.2021, the noticee has failed to submit such details/documents. Thus, there was the delay of 207 days in submitting the details as called for and, accordingly, penalty @ Rs 200/day liable to be paid by service provider comes to **Rs.41,400/-.**

10. 2 As regard penal action under Section 78 of the said act there is no submission on the part of service provider. However, on going through the details of records submitted by the service provider I have noted that the noticee had provided the service to dealer, body corporate and partnership firm but failed to produce consignment note/lorry receipt and other supporting documents in respect of the rendered services. Therefore, extension of exemption from payment of service tax cannot be granted to the assessee without examination of the said documents. Hence they evaded payment of Service Tax, and suppressed the material facts from the department about service provided and value realized by them with intent to evade payment of service tax. The said act on their part was intentional which involves suppression of fact and, thereby, they are liable to penalty under Section 78 of the finance act.

11. In above view, I pass the following order.

ORDER

i) I order to recover Service Tax amounting to Rs.**85,48,867/- (Rupees Eighty Five Lakh Forty Eight Thousand Eight Hundred Sixty Seven only)** which was not paid for the F.Y.2015-16, 2016-17, from M/S. Jayraj Shanmugam Pallar, A-9, Aryavrat Bunglow, Govt.Ware House, Bareja, Ahmedabad- 382425 under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;

ii) I order to recover interest at the prescribed rate from M/S. Jayraj Shanmugam Pallar, A-9, Aryavrat Bunglow, Govt.Ware House, Bareja, Ahmedabad- 382425 for the period of delay of payment of service tax mentioned above under Section 75 of the Finance Act, 1994;

iii) I order to recover late fee of Rs.80,000/-(Rs.20,000/- for each ST-3 Return for four returns for the period from April-2015 to September-2015, October-2015 to March-2016, April-2016 to September-2016 and October-2016 to March-2017) for ST-3 return filed late for the relevant period under Rule 7C of the Service Tax Rules,1994 read with Section 70 of the Finance Act,1994 in terms of discussions held at Para 9 of the order.

iv) I Impose a penalty of Rs. 41,400/- (Rupees Forty One Thousand Four Hundred only) on M/S. Jayraj Shanmugam Pallar, A-9, Aryavrat Bunglow, Govt.Ware House, Bareja, Ahmedabad- 382425 under Section 77 of the Finance Act, 1994.

v) I impose a penalty of Rs.**85,48,867/- (Rupees Eighty Five Lakh Forty Eight Thousand Eight Hundred Sixty Seven only)** on M/S. Jayraj Shanmugam

Pallar, A-9, Aryavrat Bunglow, Govt.Ware House, Bareja, Ahmedabad- 382425 under Section 78 of the Finance Act, 1994 for non payment of service tax by wilful suppressing the facts from the department with intent to evade the payment of service tax explained hereinabove.

16/11/22

(MARUT TRIPATHI)
Joint Commissioner,
CGST & Excise, Ahmedabad South,
Ahmedabad.

BY SPEED POST AD/HAND DELIVERY
F.No.: STC/4-14/O&A/Jayraj/21-22 Date: 16.11.2022

DIN: 20221171MN0000111ED1

To,
M/s. JAYRAJ SHANMUGAM PALLAR
A-9, ARYAVRAT BUNGLOW,
GOVT.WARE HOUSE,
BAREJA, AHMEDABAD- 382425

Copy to:
1

1) The Principal Commissioner, CGST, Ahmedabad South.
2) The Deputy Commissioner, Central GST, Div-IV, Ahmedabad South.
3) The Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
4) The Superintendent, Range-I, CGST, Div-IV, Ahmedabad South.
5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
6) Guard file.