



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/04-02/O&A/Mohd/21-22  
DIN No. : 20221264WS000051515B

आदेश की तारीख: Date of Order : 23.12.2022  
जारी करने की तारीख: Date of Issue : 23.12.2022

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

\*\*\*\*\*

**मूल आदेश सं./Order-In-Original No.62/CGST/Ahmd-South/JC/MT/22-23**

\*\*\*\*\*

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क 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, आम्बावाड़ी, 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। इसके साथ 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 विरुद्ध 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 भुक्तान 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."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. F. No.STC/04-02/O&A/Mohd/21-22, issued to M/s Mohd Amin M. Dholajivala situated at Near Madni Masjid, Sikander Market, Danilimda, Ahmedabad.

## BRIEF FACTS OF THE CASE

1. MOHD AMIN M DHOLAJIWALA (hereinafter referred to as "the said service provider") situated at NEAR MADNI MASJID,/SIKANDER MARKET,/DANILIMDA, with PAN No. AHZPD9880D was not found to be registered with the Service Tax department.

1.2 As per the information received from the Income Tax Department, M/s. MOHD AMIN M DHOLAJIWALA had earned substantial service income, however, they did not obtain service tax registration and did not pay service tax thereon.

1.3 Therefore, a letter dated 26.8.20 and summons dtd. 10.11.2020 and 31.3.2021 were written to the said Service Provider with a request to submit the documentary evidence with respect to their income within a week time from the date of receipt of above referred letter. However, the said Service Provider failed to submit the required details / documents or offer any explanation / clarification regarding income earned by them. Further, the Income Tax Department shared the data for the Financial Year 2015-16 and 16-17 . 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	29259623	Service Sector [Others]
2	2016-17	24715422	Service Sector [Others]

## 2 LEGAL PROVISION

2.1 According to Section 66D of the Finance Act, 1994, all services are taxable and only those services that are mentioned in the Negative list are exempted. The nature of activities carried out by the said Service Provider appears to be covered under the definition of service and it appears that they are not covered under the Negative List as given in the Section 66D of the Finance Act, 1994 and also declared services given in 66E of the Finance Act, 1994, as amended from time to time. These services also appear to be not exempted under mega exemption Notification No. 25/ 2012-S.T. dated 20-06-2012, as amended from time to time, and hence the aforesaid services provided by the said Service

Provider appears to be subjected to Service Tax under the provisions Section 66B of Finance Act, 1994.

2.2 As per Section 69(1) of the Act, *every person liable to pay the Service Tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

2.3 As per Section 69(2) of the Act 1994, *any service provider, whose aggregate value of taxable service in a financial year exceeds Rs. 9 lakh is required to take Registration.* Further, according to Notification No. 33/2012-(Service Tax) dated 20.06.2012, Central Government has exempted taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act, 1994. Therefore, it appears that the said Service Provider was required to obtain Service Tax Registration and comply the Service Tax laws accordingly.

2.4 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).*

2.5 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.*

## **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 2017-18 upto June 2017, 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 16-17. 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**

<b>Financial Year</b>	<b>Taxable Value as per IT Data i.e.Sales/Gross</b>	<b>Rate of Service Tax inclusive of EC &amp; SHEC</b>	<b>Service Tax payable</b>
2015-16	29259623	14.5%	4242645
2016-17	24715422	15%	3707314
<b>total</b>			<b>7949959/-</b>

3.3 It appears that the said Service Provider had neither obtained a Service Tax registration for the services provided by them for the period of F.Y. 2015-16 and 16-17 nor responded to correspondence made with them regarding actual services provided by them, concealed the value from the department, declared to the income tax department. Therefore, it appears 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. 7949959/- 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 78 of Finance Act, 1994.

#### **4. PENAL ACTION**

4.1 It further appears 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 the 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 As per Section 70 of Finance Act, 1994, the fees for the late filing of return are prescribed. When the nature of default for late filing of fees is less than 15 days, the amount of penalty is Rs. 500 for 15 days; where the nature of default is more than 15 days & less than 30 days, the amount of penalty is Rs. 1000; and where the nature of default is more than 30 days, the amount of penalty is Rs. 1000 + Rs. 100 for each day subject to maximum penalty of Rs. 20000/-. Hence, they are liable for payment of late fees for non filing of ST 3 returns for the aforesaid period in stipulated time.

4.3 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."*

4.4 In the instant case, the said service provider has failed to properly assess the Service Tax liability. Thus, they have resorted to suppression of material facts by not reflecting the correct taxable income incurred in respect of the services liable to Service Tax in their ST-3 returns. Accordingly, it appears that the Service Tax as quantified herein above is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. The said Service Provider has not disclosed full, true and correct information about the value of the service provided by them, and thus, it appears that there was a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appears that all

these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of proviso to Section 73(1) of Finance Act, 1994 to demand the Service Tax short not paid.

4.5 In view of discussion in the fore going paras, it appears 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. 7949959 /- (Non-payment of Service Tax for the period 2015-16 and 16-17 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 Rs7949959/- (including EC, SHEC, SBC & KKC) for the period 2015-16 and 16-17 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.

4.6 Further, the said Service Provider failed (a) to take Service Tax Registration in accordance with the provisions of section 69 *ibid*; (b) to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Finance Act, 1994; (c) to furnish information / documents called for from them; and (d) to pay the tax, accordingly the said Service Provider is liable to penalty under the provisions of Section 77(1) of Finance Act, 1994.

4.7 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 assessment 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 letter 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 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the service provider accordingly.

5 Therefore, M/s. MOHD AMIN M DHOLAJIWALA are hereby called upon to show cause to the Joint Commissioner, Central GST, Ahmedabad South having his office situated at 7<sup>ST</sup> Floor, GST Bhvan, Opp. Govt. Polytechnic, Ambawadi, Ahmedabad-380015 as to why:-

- Service Tax of Rs.7949959/- which was not paid for the F.Y.2015-16 and 16-17 as per Table-A in para-11 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994;
- 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 (i) above under Section 75 of the Finance Act,1994;
- Penalty should not be imposed upon them under Section 77(1) of the Finance Act, 1994 for failure to take Service Tax registration as per the provisions of Section 69 of the Finance Act, 1994;
- 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
- Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for non-payment of Service Tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax as explained herein above.

5.1 The proceedings proposed and that may be taken against the said Service Provider, under the aforementioned provisions of the Finance Act, 1994 read with the Service Tax Rules, 1994 framed there under, are saved by the Section 174(2) of the CGST Act, 2017.

## 6. DEFENCE REPLY

6.1 The said service provider vide reply dated 02.06.2021 has submitted that they are not liable to pay service tax as service provided by them is exempted from service tax. They have requested for personal hearing time to explain the matter.

## 7. RECORD OF PERSONAL HEARING

7.1 M/s. MOHD AMIN M DHOLAJIWALA, have been given chance to be heard in person on 07.11.2022 vide this office letter of even no. dated 17.10.2022, however, the same was return undelivered with remarks "left" by postal authority. Therefore same were emailed on 01.11.2022 to the service provider. Further personal hearing dated 18.11.2022 was fixed and intimation of P.H.letter dated 07.11.2022 was sent to the service provider. Shri Nikhil Joshi, Accountant appeared for the service provider with duly signed authority letter from the service provider. He stated that party is engaged in textile job work so they are exempt from Service Tax. The Service Provider has submitted copy of Income Tax Audit Report for the period from F.Y.2014-15 to 2017-18, Notification No. and sales register copy.

## 8. DISCUSSIONS & FINDINGS

8.1 I have carefully gone through the records of the case and defence reply submitted by the service provider on 18.11.2022.

8.2 The issue to be decided is whether ;

- The service provider has earned any taxable income on which he is liable to pay Service Tax.
- The service provider is entitled for the benefit of the exemption Notification No. 25/2012-ST dated 20.06.2012.

8.3 As per the facts available on record, the Income tax department shared the data for the financial year 2015-16 and 2016-17 that the said service provider has earned substantial service income. However, they did not pay service tax on actual sale of services therefore on the basis of above details the department has worked out the service tax liability as under:



Table-B

Financial Year	Taxable Value as per IT Data i.e.Sales/Gross Receipts From Services (From ITR)	Rate of Service Tax inclusive of EC & SHEC	Service Tax payable
2015-16	29259623	14.5%	4242645
2016-17	24715422	15%	3707314
total			7949959/-

Therefore, in the said Show Cause Notice a demand and recovery of service tax amount of Rs. 79,49,959/- had been proposed under sub-section (1) of Section 73 of the Finance Act, 1994; demand of interest under Section 75 of the Finance Act, 1994 had been proposed; Penalty under Section 77 and 78 of the Finance Act, 1994 has been proposed; late fee under Rule 7C of the Service Tax Rules, 2002 read with Section 70 of the Finance Act, 1994 for non submission of Service Tax Returns has been proposed.

8.4 I find that the service provider in his written submission as well as, during the personal hearing, contended that they are engaged in textile job work so they are exempt from Service Tax. The service provider has submitted copies of their Income tax audit report ( Form No.3CD), along with, trading Account, Profit and Loss Account and Balance sheet for the period from 2014-15 to 2017-18, Sales Register for the period from 2014-15 to 2017-18, and copy of Notification No.25/2012-ST dated 20.6.2012.

8.5 Now I would like to go through the legal aspects of the taxability of Service Tax.

8.5.1 The relevant extract of sub section 44, 51 of Section 65B, Section 66B of the Finance Act, 1994, as amended from time to time, is reproduced below:-

*(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

-----  
-----

*(51) "taxable service" means any service on which service tax is leviable under section 66B;*

*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 fourteen percent. 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.*

8.6 The relevant extract of Section 68, Section 69 and Section 70 of the Finance Act, 1994, as amended from time to time, is reproduced below:-

*SECTION 68. Payment of service tax. — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed.*

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

*Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.*

*SECTION 69. Registration.— (1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

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

*SECTION 70. Furnishing of returns. — (1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.*

*(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.*

8.7 It is necessary to go through the relevant text to Notfn No 25/2012-ST dated 20.6.2012, as amended. The relevant text is reproduced below:

“In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

30. Carrying out an intermediate production process as job work in relation to –

(a) agriculture, printing or textile processing;

Notfn No 25/2012-ST dated 20.6.2012 was subsequently amended to read as:

30. Services by way of carrying out, -

(ii) any intermediate production process as job work not amounting to manufacture or production in relation to –

(a) agriculture, printing or textile processing”

9 I have gone through copy of the Income tax Audit Report as well as *Trading Account Profit and loss Account and Balance sheet for the year end 31 March 2016 and for the year end 31 March 2017 and Profit & Loss A/c 1 Apr-2016 to 31- Mar-2017 and Sales register* submitted by the said service provider on 18.11.2022 in their defence submission. However the same are not showing any evidence that shows that the incomes comes from job work service of textile processing, that are exempt service by virtue of exemption noti.no.25/2012-ST dtd.20.06.2012. The service Provider in their defence submission as well as during personal hearing has submitted that they are not liable to pay service tax since they are providing Job work for textile processing, **however they have failed to submit any substantial documents like Contract for Job work, Job work sales invoice & purchase invoice, Job work goods movement register/challan register, copy of Job work challan for goods, etc., which shows that they are engaged in job work for textile in support of their arguments.** Merely claiming the exemption without submission documentary evidence by service provider can not entitled them for exemption from paying service tax. I also find that the service provider has submitted the documents shown at Para 8.8 above doesn't show that they are providing job work for textile. In absence of the substantial evidence the service provider is not entitled for benefit of exemption Notification No.25/012-ST dated 20.06.2012.

9.1 I have also gone through Tax Audit report (Form No.3CD) submitted by the service provider. As per annexure-6 of Tax Audit report (Form No.3CD) showing the TDS details, I observe that TDS of the said Service provider has been deducted under Section 194C of Income Tax Act, 1961.

According to the Section 194C of the Income Tax Act, any individual making a fee to a residential individual, who carries out 'work' as a contract between the 'specified individual' and the 'resident contractor,' is obliged and required to deduct TDS (Tax Deducted At Source).

The word 'work' comprises the following:

- Catering;
- Advertising;
- Broadcasting and telecasting;
- Conveyance of goods/travellers by any method of transport excluding railway;
- Production/supplying a product based on the specification of buyers by utilising material acquired from the buyer. Nevertheless, it doesn't bear when the material is purchased from an unspecified person other than the buyer.

**9.2** In view of foregoing paras I find that in absence of **substantial documents like Contract for Job work, Job work sales invoice & purchase invoice, Job work goods movement register/challan register, copy of Job work challan for goods, etc., which shows that they are engaged in job work for textile**, the claim of Service provider that they are engaged in business of job work for textile is not sustainable. Therefore the service provider is not entitled for the exemption of service tax as the benefit given to the services mentioned at Serial no.30 of exemption Notification No. 25/2012-ST dated 20.06.2022.

**9.3** Further, I also find that the activity carried out by the service provider does not come within the ambit of the Negative list specified in Section 66D of the Finance Act, 1994, therefore, in terms of sub-section 44 and 51 of Section 65B of the Finance Act, 1994, the activities carried out by the said service provider are supposed to be considered as taxable service and they were required to pay service tax at the rate specified as per Section 66B as amended from time to time in terms of Section 68 of the Finance Act, 1994. Moreover, I also find that the service provider has failed to do so. Therefore, I find that the allegation made in Show Cause Notice that the said service provider has failed to pay service tax and demand of the same is legal and sustainable.

**9.4** I also find that the service provider had not provided any substantial documents 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% and 15% for the F.Y. 2015-16 & 2016-17 that arrived to Rs.42,42,645/- on taxable value of Rs. 2,92,59,623/- and Rs. 37,07,314/- on taxable value of Rs. 2,47,15,422/- respectively. However during the adjudication proceedings, the service provider has provided sales register for the F.Y.2015-16,2016-17 and 2016-17 (upto June-2017). On going through the sales register, I find that the transaction of sales shown as Rs. Rs. 2,95,18,852/- instead of Rs. 2,92,59,623/- for the F.Y.2015-16 and Rs. 2,52,18,852/- instead of Rs. 2,47,15,422/- as shown in Audited Financial statements, however the reason of such difference has not been mentioned by the service provider anywhere neither in defence submission nor during the personal hearing. I also find that the service provider has submitted sales ledger year wise instead of date wise, hence while calculating liability for the period 01.04.2015 to 31.05.2015, for the period 01.06.2015 to 14.11.2015 and for the period 15.11.2015 to 31.03.2016. Therefore liability of service tax has been re-calculated as per the sales register provided by service provider that comes to Rs.41,60,077/- ( Rs.82,568/- less than the demand made in SCN) for the

F.Y.2015-16, Rs.37,38,949/- ( Rs.31635 more than the demand made in SCN) for the F.Y.2015-16 and Rs.10,60,680/- for the F.Y. 2016-17 (upto June-2017).

The service tax liability is worked out as under:

**Table-C**

Year	Period	Value of Service	Rate of service tax %	Tax Liability
2015-16	01.04.15 to 31.05.15	26,99,907	12.36%	333709
	01.06.15 to 14.11.15	1,24,75,715	14%	1746600
	15.11.15 to 31.03.16	1,43,43,230	14.50%	2079768
	<b>Total Amount in Rs.</b>	<b>2,95,18,852</b>		<b>41,60,077</b>

**Table-D**

Year	Period	Value of Service	Rate of service tax %	Tax Liability
2016-17	01.04.16 to 31.05.16	87,78,765	14.50%	12,72,921
	01.06.16 to 31.03.17	1,64,40,187	15%	24,66,028
	<b>Total Amount in Rs.</b>	<b>2,52,18,952</b>		<b>37,38,949</b>
2017-18	01.04.17 to 30.06.17	70,71,197	15%	10,60,680
	<b>Total Amount in Rs.</b>	<b>70,71,197</b>		<b>10,60,680</b>

**9.5** I also find 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. Now during the adjudication proceedings, the service provider has provided sales register for the F.Y.2015-16, 2016-17 and 2017-18 (upto June-2017). Therefore in the instant case relying on Board Circular No. 1053/02/2017-CX dated 10.03.2017 read with para 2.8 it is mentioned as **the Service Tax liability arising in future, for the period 2015-16, 2016-17 and 2017-18 (upto June-2017) is not covered under this Show Cause Notice, will be recoverable from the service provider.** Therefore, I have covered the entire legacy period from 2015-16 to 2017-18 (upto June-2017) as per information/data provided by the service provider during the adjudication proceedings.

**9.6** In view of forgoing paras and Table-C and Table-D, I find that the service provider has failed to pay service tax to the tune of Rs. 41,60,077/- on the taxable value of Rs. 2,95,18,852 for the financial year 2015-16; service tax to the tune of Rs. 37,38,949/- on the taxable value of Rs. 2,52,18,952/- for the financial year 2016-17; and service tax to the tune of Rs. 10,60,680/- on the taxable value of Rs. 70,71,197/- for the

financial year 2017-18 (upto June-2017) and in **total service tax to the tune of Rs. 89,59,706/- on taxable value Rs.6,18,09,001/-**.

**10.** Further, I find that the said Service Provider had neither registered themselves with the service tax department nor had filed ST-3 returns and the same has also been confirmed by the said service provider in their defence submission dated 18.11.2022. Therefore, the allegation made in the show cause notice that the said service provider has not registered with the service tax department as required under Section 69 of the Finance Act, 1994 and had failed to file ST-3 returns for above mentioned period as required under Section 70 of the Finance Act, 1994 is found legal and sustainable.

**11.** I find 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 demand of service tax amounting to Rs. **89,59,706/-** 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 is legal and sustainable.

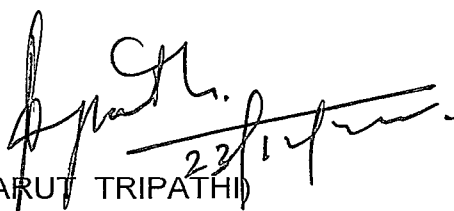
**12.** Further, I find that all the acts of suppression of facts i.e non reflecting of taxable value of service provided by them in their Service Tax Returns or non providing of correct information at any point of time, omission and commission committed on the part of the service provider with intent to evade payment of service tax to the tune of **Rs. 89,59,706/- on taxable value Rs.6,18,09,001/-** for Financial Year 2015-16, 2016-17 and 2017-18 (upto June-2017), rendered themselves liable for penal action under Section 78 of the Finance Act, 1994. Therefore, I find that the penal action proposed under Section 78 of the Finance Act, 1994 in show cause notice is legal and sustainable. Moreover, I also find that the service provider has contravened the provisions of Section 66B, 67, 68 and 69 of the Finance Act, 1994, in as much as they had failed to get themselves registered with the service tax department; had failed to correctly self assess their service tax liability and had failed to pay the correct service tax to the Government rendered themselves liable for penal action under Section 77 of the Finance Act, 1994. Therefore, I find that the penal action proposed under Section 77 of the Finance Act, 1994 in the show cause notice is legal and sustainable.

**13.** I also find that the service provider had failed to file their ST-3 returns for period April' 2015- September' 2015; October' 2015- March' 2016; April' 2016- September' 2016 and October' 2016 -March' 2017 within prescribed time frame as well as they had failed to pay late fees as prescribed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. Therefore, I find that the demand of late fee proposed in show cause notice is legal and sustainable.

14. In view of above discussion, I pass the following order.

**ORDER**

- i) I order to recover Service Tax amounting to Rs. **Rs. 89,59,706/- (Rupees Eighty Nine Lakhs Fifty Nine Thousands Seven Hundred and Six only)** which was not paid for the F.Y.2015-16, 2016-17, and 2017-18 (upto June-2017), from MOHD AMIN M DHOLAJIWALA (hereinafter referred to as "the said service provider") situated at NEAR MADNI MASJID,/SIKANDER MARKET,/DANILIMDA, with PAN No. AHZPD9880D under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
- ii) I order to recover interest at the prescribed rate from MOHD AMIN M DHOLAJIWALA (hereinafter referred to as "the said service provider") situated at NEAR MADNI MASJID,/SIKANDER MARKET,/DANILIMDA, with PAN No. AHZPD9880D for the period of delay of payment of service tax mentioned above at Sr. (i) under Section 75 of the Finance Act, 1994;
- iii) I order to recover late fee of Rs.80,000/-under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for non submission of ST-3 returns for the period of April' 2015- September' 2015; October' 2015-March' 2016; April' 2016- September' 2016 and October' 2016 -March' 2017. in terms of discussions held at above mentioned para of the order.
- iv) I Impose a penalty of Rs. 10,000/- (Rupees Ten thousands only) on from MOHD AMIN M DHOLAJIWALA (hereinafter referred to as "the said service provider") situated at NEAR MADNI MASJID,/SIKANDER MARKET,/DANILIMDA, with PAN No. AHZPD9880D under Section 77 of the Finance Act, 1994, in as much as they have failed to obtain service tax registration under Section 69 of the Finance Act, 1994.
- v) I impose a penalty **Rs. 89,59,706/- (Rupees Eighty Nine Lakhs Fifty Nine Thousands Seven Hundred and Six only)** which was not paid for the F.Y.2015-16, 2016-17, MOHD AMIN M DHOLAJIWALA (hereinafter referred to as "the said service provider") situated at NEAR MADNI MASJID,/SIKANDER MARKET,/DANILIMDA, with PAN No. AHZPD9880D, 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.

  
 (MARUT TRIPATHI)  
 Joint Commissioner  
 Central GST,  
 Ahmedabad South.

