



सत्यमेव जयते

प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad
South,
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
4th Floor, GST Bhavan, 380015



फा.सं. STC/4-45/Metro Security/O&A/20-21

DIN- 20230164WS000000A19F

आदेश की तारीख: Date of Order:06.01.2023

जारी करने की तारीख: Date of Issue : 13.01.2023

द्वारा पारित /Passed by: Shri Shravan Ram, JOINT COMMISSIONER

मूल आदेश सं./Order-In-Original No.: 71/CGST/Ahmd-South/JC/SR/2022-23

यह प्रति उस व्यक्ति लिए (जिनके) जिसके,को (यों) यह आदेश जारी किया गया है ,उसके व्यक्तिगत (उनके) 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 भवनअहमदाबाद,आंबावाड़ी, -को प्रारूप 15 एस.टी.-4 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 -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** 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.एस.टी.-4 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क 2001,नियमावली (अपील)के नियम के 3उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. 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 -/2.00 अथवा उक्त आदेश की अन्य प्रति जिसपर रु (का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Two 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 केमें शुल्क (अपील)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. STC/4-45/Metro Security/O&A/20-21 dated 29.12.2020,

M/s Metro Security and Technical Services, 31,42, Astha Avenue, Opp. R.T.O.,
Subhash Bridge circle, Ahmedabad-380027.

BRIEF FACTS OF THE CASE:-

1. M/s. Metro Security and Technical Services, holding Service Tax registration number ANCPS4720JST001 for their office at 503, 5th Floor, Akash Avenue, B/h. Muslim Soc., Mithakali Six Roads, Navrangpura, Ahmedabad (here-in-after referred to as "the assessee" or "M/s Metro" or "the said assessee" for the sake of brevity) was a partnership firm engaged in providing Security Services and Erection, Commissioning and Installation Services, falling under the broad category of 'Service' as defined under Section 65B(44) of Finance Act, 1994, as amended after the introduction of negative list w.e.f. 01.07.2012. Consequent to the issue of the Notification No.12/2017 Central Excise (NT), No.13/2017 Central Excise (NT) and 14/2017 Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers reallocating the jurisdiction of the Central Excise Officers, and Trade Notice No. 001/2017 dated 16.06.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, M/s. Metro Security and Technical Services was registered under the Jurisdiction of the Ahmedabad South Commissionerate, Central Goods and Service Tax.

2. M/s Metro was filed five declarations in Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under Voluntary Disclosure category and filed SVLDRS-1 form on 31.12.2019. Further, Designated Committee for SVLRDS was issued SVLDRS-3 on 20.04.2020. The details of SVLDRS-1 and SVLDRS-3 are as under: -

(Amount in Rs.)

S1. No.	Period	ARN NO	SVLDRS-3 No.	Duty Declared in SVLDRS-1
1	Oct.-14 to March-15	LD3112190010506	L200420SV300125	43,495
2	Oct-15 to March-16	LD3112190010973	L200420SV300127	45,978
3	April-16 to March-17	LD3112190009448	L200420SV300126	35,78,420
4	April-17 to June-17	LD3112190012058	L200420SV300128	14,90,300
Total				51,58,193

2.1. As per Section 127(5) of the Finance (No.2) Act 2019, *"The declarant shall pay electronically through internet banking, the amount payables indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement."*

2.2. Further, as per Section 7(iv) of The Taxation and other Laws (relaxation of certain provisions) Ordinance, 2020, "in Section 127(5), for the words "within a period of thirty days from the date of issue of such statement", the words, figures and letters "on or before the 30th days of June, 2020" shall be substituted."

2.3. From the above, it appeared that M/s. Metro Security and Technical Services was required to pay tax dues amount as per SVLDRS-3 up to 30.06.2020, but they failed to pay the tax

dues amount on or before the prescribed date. Therefore, Discharge Certificate was not issued by the Designated Committee, SVLDRS, Ahmedabad South and the amount declared under the application was considered as tax/ duty not paid by the assessee. Therefore, Service tax inquiry was initiated against M/s Metro Security and Technical Services for the period Oct.-2014 to June-2017.

3. Further, summons dated 27.11.2020 and 07.12.2020 were issued to M/s. Metro Security and Technical Services and subsequently, M/s Metro submitted the financial documents from Oct.-2014 to June-2017.

4. On the basis of the documents submitted by the said assessee, verification was carried out for the period from Oct.-2014 to June-2017. On going through the documents provided by the assessee, it appeared that the said assessee was engaged in providing Security/ Detective agency service, Erection, Commissioning and installation service etc. and the same were taxable as per the Finance Act, 1994. Further, the said assessee provided taxable services to their customers and received consideration. However, they failed to pay appropriate Service Tax on the income received from service provided by them.

5. **Legal Provisions: -**

5.1. The definition of taxable service provided under Section 65(51) of erstwhile Act is as under
"Taxable service means any service on which Service tax is leviable under Section 66B."

5.2. **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 (12.36%, 14%, 14.5% and 15% as changed time to time). 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."

5.3. The provisions of Section 68 of the Finance Act, 1994.

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.

6. From the financial records i.e. Balance Sheet, Sales Ledger and Invoices provided by the said assessee for the period Oct.-2014 to June-2017, it appeared that M/s Metro Security and Technical Services provided taxable services to their customers and charged service tax on sales invoices. The calculation of service tax liability for the period Oct.-2014 to June-2017 worked out as under: -

(Amount in Rs.)

Year	Total Gross Receipts as per Balance sheet	Gross Receipts as per ST-3	Differential Taxable turnover	Receipts of Security Services (S.T. to be paid by recipients)	Net Diff. Taxable Turnover	Service Tax payable (including Cess)
1	2	3	4	5	6	7
2014-15	31668457	31316560	351897	0	351897	43495
2015-16	63758147	63386767	371380	0	371380	45978
2016-17	59559914	Not Filed	59559914	28226071	31333843	4519777
2017-18 (Upto June, 2017)	17126181	Not Filed	17126181	7150071	9976110	1490300
TOTAL						60,99,550

7. Further, on going through the documents submitted by the assessee it appeared that the assessee made total payment of Rs. 9,41,357/- for the F. Y. 2016-17 through challans, the details of which are as under:

S. No.	Challan No.	Date	Amount
1	01131	20.01.2017	5,075
2	01115	20.01.2017	4,03,967
3	01124	20.01.2017	5,32,315
Total			9,41,357

8. In view of the above, it appeared that the assessee was not paid service tax totally amounting to Rs. 51,58,193/- (Rs. 60,99,550 - Rs.9,41,357) during the period Oct.-2014 to June-2017 as discussed here in above and the same was required to be recovered from them under proviso to Section 73(1) of the Finance Act, 1994.

9. 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 assessee. 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, reassessment, 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.

In the instant case, the assessee failed to properly assess the service tax liability and also failed to pay the same to the government exchequer. Accordingly, it appeared that the service tax amounting to Rs. 51,58,193/- on services provided by the said assessee as discussed above, was liable to be recovered by invoking the extended period of limitation as provided under proviso to Sec. 73(1) of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994 and penalty under Section 78(1) of finance Act, 1994.

10. As per Section 70(1) of the Finance Act, 1994, every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish a return in such form and in such manner and at such frequency as may be prescribed. 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 was not assessed the tax dues properly, on the service provided by him, as discussed above, and failed to file ST-3 returns for the period from April-2015 to Jun-2017, within stipulated time limit, thereby violated the provisions of Section 70(1) of the finance Act, 1994 read with Rule 7 of the Service Tax Rules.

11. From the following table, it was seen that the said noticee did not file their ST-3 returns in timely manner for the period from October, 2014 to March, 2016. Also, they had not filed their ST3 returns for the period from April, 2016 to June, 2017. Late fees for delay in filing return is as under:

F. Y.	Period	Due Date	Date of return filing	No. of days delayed	Late fees Payable (Rs.)	Late Fees Paid (Rs.)	Difference Payable (Rs)
2014-15	Oct-March	25.04.2015	01.08.2015	98	7800	0	7800
2015-16	April-Sep	25.10.2015	20.02.2016	118	9800	0	9800
	Oct-March	29.04.2016	27.05.2016	28	1000	0	1000
2016-17	April-Sep	25.10.2016	Not Filed				
	Oct-March	25.04.2017	Not Filed				
2017-18	April-June	15.08.2017	Not Filed				
Total					18600	0	18600

12. As per the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 as amended, every person providing taxable service to any person was liable to pay Service Tax at the rate prescribed in Section 66, to Central Government by the of the month/ quarter immediately following the calendar month/ quarter in which the payments were received towards the value of taxable services,

13. The said assessee was not disclosed full, true and correct information about the value of the service provided by them are liable for payment of services tax. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about the taxable value. It appeared that all these material information was 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 under proviso to Section 73 (1) of the Finance Act, 1994 to demand the Service Tax not paid.

13.1 The relevant portion of Section 73(1) & 73(6) is reproduced herein below:

Section 73 of Finance Act, 1994- Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded –

(1) *Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the (Central Excise Officer) may, within 'Thirty months' from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has. been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

- a. fraud; or*
- b. collusion; or*
- c. wilful mis-statement; or*
- d. suppression of facts; or*
- e. contravention of any of the provisions of Chapter or of the rules made there under with intent to evade payment of service tax; by the this person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "Thirty months" the words "five years" had been substituted.*

* * * *

(6) *For the purposes of this section, "relevant date" means, — (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short- levied or short-paid —*

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be

filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made there under;

in a case where the service tax is provisionally assessed under this Chapter or the rules made there under, the date of adjustment of the service tax after the final assessment thereof;

in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.;

14. As per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68, or Rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed was liable to pay interest at the rate as was for the time being fixed by the Central Government, by Notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed.

15. The government has from the very beginning placed full trust on the service provider so far Service Tax was concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence were in place. Further, a taxable service provider was not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust was placed on the service provider and private records maintained by him for normal business purposes were accepted, practically for all the purpose of Service Tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision was contravened or there was a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appeared that the said assessee has not taken into account all the income received by them for rendering taxable services for the purpose of payment of Service Tax and thereby minimize their tax liabilities. The deliberate efforts to mis-declare the value of taxable service in ST-3 Returns and not paying the correct amount of Service Tax in utter disregard to the requirements of law and breach of trust deposited on them such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with intent to evade payment of Service Tax .

16. Thus it appeared that the said service provider has contravened the provisions of:

(a) Section 66B of the Finance Act, 1994 in as much as they have failed to pay the service tax as detailed above, to the credit of Central Government.

(b) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to assess the service tax due on the taxable Services rendered to M/s. Metro Security and Technical Services and reflect the same in their ST-3 returns.

(c) Section 67 of the Finance Act, 1994 in as much as they failed to pay appropriate service tax on the gross value amount charged by them in respect of the taxable services provided by them.

(d) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in as much as they have failed to discharge Service Tax liability (including Cess), in respect of the taxable service provided by them, for the period from Oct.-2014 to June- 2017, engaged in providing taxable services which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 2012, to the credit of the government within the statutory time-limit prescribed at the relevant time-period. As per Rule 6 of the Service Tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service.

17. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 appeared to be punishable under the provisions of Section 77 and Section 78 of the Finance Act, 1994 as amended time to time.

18. Thus it appeared, the said assessee failed to assess Service Tax on the said service under Section 70 read with Rule 2(1)(b) of Service Tax Rules, 1994; failed to pay Service Tax as provided under Section 68 read with Rule 6 of Service Tax Rules, 1994; failed to declare taxable value in their ST- 3 returns filed by them from time to time under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and thereby suppressed material facts. The said acts and omission on their parts appeared with intent to evade payment of Service Tax and accordingly the said amount of Service Tax of Rs. 51,58,193/- is required to be recovered from the assessee under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest at applicable rate provided under Section 75 of Finance Act, 1994. The said act on the part of the assessee made them liable to penalty under Section 77 and 78 of the Finance Act, 1994.

19. The period of investigation involves non-payment/ short payment of service tax from Oct.-2014 to June-2017. M/s Metro Security and Technical Services filed ST-3 returns for the period from Oct.-2014 to March-2016 and was not filed ST-3 return for the period April-2016 to June-2017. The date of filing ST-3 return for the period Oct.-2014 to March-2015 was 11.06.2015. Hence the last date of issuance of Show Cause Notice, after invoking extended period of limitation, would have been on 10.06.2020 in normal course. However, in view of the spread of Pandemic COVID-19 across countries of the world including India, vide Section 3(1) of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020 issued by Ministry of Law & Justice, the Government of India has relaxed time limit in specified Act which falls during the period from 20.03.2020 to 26.06.2020 for completion or compliance of such action and extended it to 30.06.2020 and further extended up to 30.09.2020 vide Notification F. No. CBEC-20/06/08/2020-GST dated 27.06.2020 and also further extended up to 31.12.2020 vide notification F. No. 450/61/2020-Cus.IV(Part-1) dated 30.09.2020. The specified Act has been defined under

Section 2 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, and also includes the Finance Act, 1994. Under the circumstances, the last date for issuance of Show Cause Notice, after invoking extended period of limitation would be 31.12.2020.

20. The provisions of repealed Finance Act, 1994 and Central Excise Act, 1944 was saved vide Section 174(2) and Section 142(8){a) of the CGST Act, 2017 and therefore the provisions of the said repealed Act and Rules were enforced for the purpose of demand of Duty, Interest etc and imposition of penalty under this notice.

21. Hence, therefore, M/s. Metro Security and Technical Services, 503, 5th Floor, Akash Avenue, B/h Muslim Soc., Mithakali Six Road, Navrangpura, Ahmedabad, were called upon to show cause to the Additional/Joint Commissioner, Central Goods & Service Tax, Ahmedabad South having his office at 6th Floor, GST Bhawan, Revenue Marg, Nr. Panjra Pole, Ambawadi, Ahmedabad 380015 as to why: -

- i. *Service Tax to the tune of Rs. 51,58,193/- (Rs. Fifty-One Lakhs Fifty-Eight Thousand One Hundred and Ninety-Three only) leviable on the taxable service provided by them during the period Oct.-2014 to June-2017 should not be demanded and recovered from them under proviso to Sub-Section (1) of Section 73 by invoking extended period of five years.*
- ii. *Interest thereon as applicable should not be charged and recovered from them under Section 75 of the Finance Act, 1994 on the above demand;*
- iii. *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for the above mentioned contraventions;*
- iv. *Penalty should not be imposed under Section 77 for not filing the return as per the provisions of Section 69 of the Finance Act, 1994 for the period from April, 2016 to June, 2017;*
- v. *Late fees of Rs. 18,600/- (Rs. Eighteen Thousand and Six Hundred only) should not be charged and recovered from them in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 for not filing their ST-3 returns for the period from Oct.-2014 to March-2016 within the prescribed time frame.*

DEFENCE REPLY: -

22. The said assessee, vide their letter dated 21.12.2022, filed their defence reply in the said matter, wherein they have submitted that:

- (i) They had applied for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred as "SVLDRS") under the Proceedings prescribed by Section 120 of The

Finance Act, 2019. Further, they had made voluntary declaration under Section 125 of the Finance Act, 2019 by submitting SVLDRS-1 for the period October, 2014 to June, 2017 without anybody from Department pointing out any short payment on our part. Accordingly, they had made Voluntary declaration of tax dues as detailed below:

SI No.	Period	SVLDRS Application date	ARN No.	Voluntary declaration of tax payment
1	Oct 2014 to Mar 2015	31-12-2019	LD3112190010506	43,495
2	Oct 2015 to Mar 2016	31-12-2019	LD3112190010973	45,978
3	Apr 2016 to Mar 2017	31-12-2019	LD3112190009448	35,78,420
4	Apr 2017 to June 2017	31-12-2019	LD3112190012058	14,90,300
Total				51,58,193

(ii) Their application was accepted by the Designated committee and on 20-04-2020, SVLDRS-3 was issued to them by the department. The issuance of SVLDRS-3 was not intimated to them through any mode, postal, email or through the portal.

(iii) In accordance with Section 127(5) of The Finance Act, 2019, they were supposed to pay the amount of voluntarily declared tax dues on or before 30th day of June, 2020; that due to COVID-19 pandemic, national lockdown was declared from 22-03-2020; that this Pandemic cost lives of their near and dear ones and they were under severe mental and financial distress.

(iv) As a matter of relief in this pandemic, **Supreme Court vide Writ Petition (Civil) No. 3 of 2020 dated 08-03-2021 took Suo Motu Cognizance of the situation arising from difficulties that might be faced by litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the General Law of Limitation or under any Special Laws (both Central or State) and issued the following directions:**

"1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-03-2020 till 14-03-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-03-2020, if any, shall become available with effect from 15-03-2021.

2. In cases..."

That thereafter, Hon. Supreme Court in its Misc. Application No. 665 of 2021 in SMW(C) No. 3 2020 dated 23-9-2021 has extended this date of 14-03-2021 to 2-10-2021 and has issued further directions that period from 15-03-2020 till 2-10-2021 shall stand excluded for computing period of limitation for any suit, appeal, **application or proceeding** and balance period, if any, shall become available w.e.f. 3-10-2021; that thereafter, Hon. Supreme Court in its Misc. Application No. 29 of 2022 in SMW(C) No. 3 2020 decided on 10-01-2022, has further extended this date of 2-10-2021 to 28-02-2022 and has issued further directions that **period from 15-03-2020 till 28-02-2022** shall stand excluded for computing period of limitation for any suit, appeal, application or proceeding and balance period, if any, shall

become available w.e.f. 28-02-2022.

- (v) They were issued SVLDRS-3 on 20-04-2020 and as these were **application or Proceedings** under the Finance Act, 2019, in accordance with law laid down by Hon. Supreme Court order dated 10-01-2022, the period of limitation would expire on 28-02-2022; that they submit that they have made all the payment of their tax dues by 28-02-2022 and provided the copies of all the challans. The payment details are as follows:

Sl No.	Challan Number	Challan Date	Relevant period	Amount (Rs.)
1	20201204183149821419	4-12-2020	Oct 2014 to Mar 2015	43,495
2	20201204183149821409	4-12-2020	Oct 2015 to Mar 2016	45,978
3	20201204183149821702	4-12-2020	Apr 2016 to Mar 2017	4,10,527
4	20210309145647845155	9-3-2021	Apr 2016 to Mar 2017	31,67,893
5	20210309150517846636	9-3-2021	Apr 2017 to Jun 2017	14,90,300
Total Payment				51,58,193

- (vi) They duly represented with the designated authority for providing relief on the above grounds; that they have made payment of the entire tax dues during 04-12-2020 to 09-03-2021 i.e. long before the extended deadline of 28-02-2022 despite a lot of financial difficulties during pandemic period and therefore all the proceedings under this SCN should be dropped.
- (vii) The SCN in its para 2.3 states that

“as M/s Metro Security and Technical services was required to pay tax dues amount as per SVLDRS-3 upto 30-06-2020, but they failed to pay the tax dues amount on or before the prescribed date. Therefore, Discharge Certificate was not issued by the Designated Committee, SVLDRS, Ahmedabad South and the amount declared under the application is considered as tax/duty not paid by the assessee.”

Despite the fact that the Supreme Court has suo motu taken cognizance for extension of limitation, the SCN presumes 30-06-2020 to be the last date for making payment. The SCN has failed to consider that due to National pandemic a relief has been provided by Hon. Supreme Court laying down that in computing any period of limitation **for any Application or Proceedings**, the period from 15-03-2020 till 28-02-2022 shall be excluded. As they have paid all their dues latest by 09-03-2021 i.e. well before the extended deadline of 28-02-2022, they requested to drop the proceedings under the SCN and thus render justice.

- (viii) They further submitted that they have paid all their dues within the time period as extended by Hon. Supreme Court and hence no tax can be demanded and recovered from them. In the matter of **N. Sundararajan (former partner M/S Yarn Bliss) vs Union of India [W.A No. 2097 of 2021]** and **N. Sundararajan (former partner M/S Winaco yarn Agencies) vs Union of India [WA No. 2098 of 2021 (Madras HC)]** similar question came up before Hon. Madras High Court as to whether delayed payment after 30-06-2020 under Section 127 of the Finance Act, 2019 should be allowed. The Hon. Madras High Court held that:

“Therefore, we are of the view that the appellant should be permitted to remit the

taxes, as quantified in the Form-3 (SVLDRS-3) declaration issued to the appellant, subject to of course by also paying interest @ 15% from 01.07.2020 till the date of remittance, which we shall fix as on or before 17.09.2021. If the appellants comply with the said condition, then the appropriate authority under the SVLDR Scheme shall consider the appellant's application and proceed in accordance with the provisions of the said Scheme."

- (ix) In Another case of **N. Sundararajan V. Union of India [W.P.No.14454 of 2020]**, Hon. Madras High Court has held in Para 12 that:

"12. In the light of the discussion as aforesaid, I am inclined to pass the following order:

- i) The petitioner is permitted to remit the amount quantified in Form 3 (SVLDRS-3) along with interest at the rate of 15%, in terms of Notification No.13 of 2016 dated 01.03.2016 and Section 75 of the Finance Act, 1994 under which service tax is levied, from 01.07.2020 till date of remittance before the third respondent, within a period of one (1) week from today."*

- (x) Respectfully following the law laid down by Hon. Supreme Court extending deadline or limitation period as also the other decisions relied upon by them, they pray to drop the proceedings under the SCN by following the judicial discipline and thus render justice. They further stated that the adjudicating authority is bound to follow the judicial discipline as set by **Hon. Supreme Court in case of UOI v. Kamlakshi Finance Corporation Ltd. [1991 (55) ELT 433 (SC)]** wherein Hon. Supreme Court has observed as under in Paragraph 6 of the said decision.

"6. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."

- (xi) In view of the extension provided by Hon. Supreme Court in its order dated 10-01-2022 and the case laws provided in para supra they submit that they are not liable to pay any tax, interest or penalty as proposed in the Show Cause Notice and pray to drop the proceedings under the SCN.

- (xii) Apart from the proposed demand of service tax not being sustainable on merits as stated above, they further submitted that with effect from 01-07-2017, the provisions of Chapter V of the Finance Act, 1994 were **omitted** vide Section 173 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act'). Further the Constitution (One Hundred and First Amendment) Act, 2016 was notified on 08-09-2016. Section 7 of the said

Act **omitted** Article 268A of the Constitution. As a result Entry 92C relating to "tax on services" of the List I of the Seventh Schedule of the Constitution was also **omitted** vide Section 17 of the Constitution (One Hundred and First Amendment) Act, 2016 and thus with effect from 08-09-2016, levy of service tax was done away with.

- (xiii) According to Section 173 of the CGST Act, save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be **omitted**.
- (xiv) It is pertinent to refer to the provisions of the General Clauses Act, 1897 that saves the rights accrued under the prior legislation and empowers the Central Government to initiate any proceedings under the **repealed** legislations in terms of Section 6 of the said Act. However, in case of *Rayala Corporation v. Directorate of Enforcement* [1969 (2) SCC 412], a five-judge Bench of Hon. Supreme Court had held that Section 6 of the General Clauses Act, 1897 applied only to **repeals and not to omissions**. In the present case, the Legislation has omitted provisions of Chapter V of the Finance Act, 1994 and therefore relying on decision of Hon. Supreme Court in case of *Rayala Corporation* (supra), no proceedings can be initiated, no liability can be fastened by the Government in respect of any alleged violation or non-compliance of the provisions contained in Chapter V of the Finance Act, 1994 as omitted vide Section 173 of the CGST Act. The initiation of proceedings under this SCN against them is without jurisdiction, unconstitutional, erroneous and they pray to drop the proceedings under the SCN on this ground also.
- (xv) They further submitted that they have not violated any provisions of Service Tax Law and there is not an iota of evidence of suppression or intent to evade payment of service tax on their part.
- (xvi) The extended period of limitation is wrongly proposed in the SCN. The SCN does not talk about the circumstances why it can invoke the provisions of extended period of limitation except making bald allegations in total disregard of facts on record that show that all required details are very well reflected in their financial records, income tax returns, audited accounts. It only depicts wrong attitude of routinely invoking the extended period of limitation. Attention is drawn to CBEC Circular No. 5/92-CX.4, dated 13-10-1992 – (1993) 63 ELT T7, wherein Board has taken note of such attitude. Board has stated that **such attitude only increased fruitless adjudication with the gamut of appeals and reviews, inflation of outstanding figures and harassment of assesses**. Board has warned that such casualness in issuance of show cause notices will be viewed seriously. It **further clarifies that mere non-declaration is not sufficient for invoking larger period, but a positive mis-declaration is necessary**, as per decision of Supreme Court in *Padmini Products and Chemphar Drugs*. Reflection of the transactions in the ledger account, financial statements and income tax records reflects upon the absence of any fraud, or collusion or suppression or willful suppression or mis-statement on our part.

(xvii) They vehemently denied the bald allegations made routinely in the SCN about mis-statement and contravention of certain provisions of Finance Act, 1994 and/or the rules made thereunder with intent to evade payment of service tax. They state that they have not made any mis-statement and non-payment of service tax. The following facts and submissions show that there was no suppression, mis-statement or intention to evade payment of service tax on their part as routinely alleged or presumed in the SCN:

(i) Figures of services provided by them are reflected in their books of accounts, audited financial statements, and income tax returns. **They have voluntarily declared their tax dues and no suppression can be alleged when they have voluntarily disclosed their liability even without department pointing it out.**

(ii) This SCN in its Para 15 states that,

“The deliberate efforts to mis-declare the value of taxable service in ST-3 returns and not paying the correct amount of Service Tax in utter disregard to the requirements of law and breach of trust deposed on them such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the Provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with intent to evade payment of service tax.” They submit that even though no departmental officer pointed out any such difference, on their own, voluntarily, they have filed declaration under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 to rectify the error that crept through oversight and hence it is clearly evident that there was no deliberate effort to mis-declare any value as presumed in the SCN.

(iii) It is a fact that the figures of taxable value and tax liability as stated in SCN is taken from their application in SVLDRS-1 and therefore there is not an iota of evidence regarding suppression of facts or intent to evade payment of service tax on their part.

(iv) They have not resorted to any fraud or collusion and there is no allegation to this effect even in the SCN.

(v) They have not contravened any of the provisions of Chapter V of the Finance Act, or of the rules made thereunder with intent to evade payment of service tax as they voluntarily declared and paid their tax dues.

(xviii) Since, they declared and paid their tax dues voluntarily and there is no fraud or collusion or willful mis-statement or suppression of facts with intent to evade payment of service tax on their part no penalty shall be payable by them under Section 73 or any other sections of Finance Act, 1994.

(xix) There is no short payment of service tax on their part as they have paid all their dues latest by 09-03-2021 i.e. well before the allowed period upto 28-02-2022. Hence, no penalty can be imposed on them under section 77(2), 77(1)(c) and section 78(1) of the Finance Act, 1994 and they pray to hold so. Relying on following decisions, they pray to hold that extended period of limitation cannot be invoked and penalty cannot be imposed in this case.

- a. **Pahwa Chemicals P. Ltd. v. CCE, Delhi [2005 (189) ELT 257 (S.C.)]** It was held that mere failure to declare does not amount to misdeclaration or willful suppression. Some positive act on part of party to establish either willful misdeclaration or willful suppression is must.
- b. In case of **Alisha Enterprise v. CCE** dated 14-05-2019, Hon. Tribunal had held, in its paragraph 9, that **when charge of deliberate non-payment of service tax due to suppression of facts or malafide intention of the appellant has not been proved from Show Cause Notice, extended period of limitation cannot be invoked and that the extended period can be invoked only when the person liable to pay tax is intentionally or deliberately involved in evasion of service tax.** We enclose copy of this decision for your ready reference.
- c. In **General Security & Information Service v. CST [2021 (52) GSTL 598 (Tri.-Kol.)]**, it was held that **the law is well settled that in the absence of any proven or established allegations of existence of active intent to defeat the law or to cheat the revenue [expression used in Section 11A of the Central Excise Act “fraud or willful misrepresentation or suppression of facts”] the revenue cannot claim the benefit of an extended period of limitation.**
- d. In **Ace Creative Learning Pvt. Ltd. v. [2021 (51) GSTL 393 (Tri.-Bang.)]**, it was held that extended period of limitation cannot be invoked where Revenue’s case is based on balance sheet, returns and other records of the assessee. **In our case also the figures of taxable value and tax liability as stated in SCN is taken from SVLDRS-1 submitted by us on 31-12-2019 and there is not an iota of evidence of suppression or misstatement or fraud or intention to evade payment of service tax. Hence we pray to drop the proceedings on the ground of limitation also in this case respectfully following the judicial discipline by following the law laid down by these decisions of higher appellate forums.**

(xx) For all these reasons and the fact that there is no outstanding liability to pay tax, no fraud or collusion or willful mis-statement or suppression of facts, or contravention of any of the provisions of Finance Act, 1994 or of the rules made there under with intent to evade payment of service tax on our part and therefore, they requested to drop the proceedings under SCN on merit as also on the ground of limitation as prayed and thus render justice.

RECORD OF PERSONAL HEARING: -

23. The personal hearing in the same matter was held on 28.12.2022 at 11:30 hrs and Shri Nitesh Jain, CA, the authorized representative, appeared on behalf of the said noticee. Shri Jain re-iterated the written submissions submitted by them earlier.

DISCUSSION AND FINDINGS: -

24. I have gone through the facts of the case, defense reply submitted by the noticee and records available on file.

25. I find that the said noticee was engaged in providing Security Services and Erection, Commissioning and Installation Services. It is an admitted fact that the services provided them are leviable to service tax and there is no denying of this fact by the noticee also as they have themselves declared their liability under the SVLDR scheme. The main submissions of the noticee are as under: -

(i) The issuance of SVLDRS-3 was not intimated to them through any mode, postal, email or through the portal.

(ii) the relief provided by the Supreme Court vide Writ Petition (Civil) No. 3 of 2020 dtd. 08.03.2021 extending the period of limitation prescribed under the General Law of limitation or under any Special Laws (both Central or State), in view of the COVID-19 pandemic is available to them and thus the payment made by them is within the deadline provided for payment of tax declared under the SVLDR Scheme.

(iii) Provisions of Chapter V of the Finance Act, 1994 were omitted vide Section 173 of the CGST Act, 2017 and thus levy of service tax was done away with as Section 6 of the General Clauses Act, 1897 applied only to repeals and not to omissions.

(iv) Extended period of limitation is not invocable as all the required details are reflected in their financial records, income tax returns and audited accounts.

26. I find that the noticee has filed five declarations in Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under Voluntary Disclosure category and filed SVLDRS-1 form on 31.12.2019. Further, Designated Committee for SVLRDS had issued SVLDRS-3 on 20.04.2020. The details of SVLDRS-1 and SVLDRS-3 are as under: -

Sl. No.	Period	ARN NO	SVLDRS-3 No.	Duty Declared in SVLDRS-1
1	Oct.-14 to March-15	LD3112190010506	L200420SV300125	43,495
2	Oct-15 to March-16	LD3112190010973	L200420SV300127	45,978
3	April-16 to March-17	LD3112190009448	L200420SV300126	35,78,420
4	April-17 to June-17	LD3112190012058	L200420SV300128	14,90,300
Total				51,58,193

27. As per Section 127(5) of the Finance (No.2) Act 2019, *‘The declarant shall pay electronically through internet banking, the amount payables indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement.’*
28. Further, as per Section 7(iv) of The Taxation and other Laws (relaxation of certain provisions) Ordinance, 2020, "in Section 127(5), for the words “within a period of thirty days from the date of issue of such statement”, the words, figures and letters “on or before the 30th days of June, 2020" shall be substituted.”
29. From the above facts and legal provisions, I find that M/s. Metro Security and Technical Services was required to pay total service tax dues amount of Rs. 51,58,193/-as per SVLDRS-3 on or before 30.06.2020. However, the said noticee has not paid their total service tax dues within stipulated time period.
30. Now, coming to the submissions made by the noticee. The first submission of the noticee is that the issuance of SVLDRS-3 was not intimated to them through any mode, postal, email or through the portal. On going through the records, I find that the designated committee has issued SVLDR-3 electronically and SVLDR-3 obviously reflected in their portal. Further, the said Noticee never informed to this office in respect of non-receipt of SVLDR-3 before issuance of SCN as the whole SVLDR scheme was bound by time limits.
31. The next submission is that the relief provided by the Supreme Court vide Writ Petition (Civil) No. 3 of 2020 dtd. 08.03.2021 extending the period of limitation prescribed under the General Law of limitation or under any Special Laws (both Central or State), in view of the COVID-19 pandemic is available to them and thus the payment made by them is within the deadline provided for payment of tax declared under the SVLDR Scheme. In support of their submissions they have also quoted the judgments of the Madras High Court in the case of *N. Sundararajan V. Union of India*.
32. Considering the prevalence of COVID-19 virus, the following order was passed by the Hon’ble Supreme Court in the suomotu proceedings on 8-3-2021 :
- “1. In computing the period of limitation for “any suit, appeal, application or proceeding[Emphasis supplied] , the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.*
- 2. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.*

3. The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

The limitation period was extended from time to time by the Supreme Court till 28.02.2022. The contention of the noticee is that issuance of SVLDRS-3 are application or proceedings under the Finance Act, 2019 and in accordance with the law laid down by the Supreme Court, the period of limitation would expire on 28.02.2022. They have paid all the duty declared in SVLDR-1 before this date.

33. The contention of the noticee is that issuance of SVLDRS-3 comes within the ambit of application or proceedings and thus would be covered by the relief provided by the Supreme Court. The contention of the noticee cannot be accepted because payment of taxes after the issuance of SVLDRS-3 cannot be considered as any application or proceedings. The intention of the Supreme Court is very clear that the benefit is available for only suits, appeal, application or proceedings. The benefit given to these cannot be stretched to include the payment of taxes after issuance of SVLDRS-3.

34. The noticee has also sought support of the judgement of the Madras High Court in the case of *N. Sundararajan V. Union of India*. However, I find that the said judgement will also not help the noticee's cause because the High Court was dealing with the relaxations given vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. In the said case, the appellant had not paid the taxes by 30.06.2020 and had approached the Court requesting to issue directions to the Department to accept the payment after this date in view of the pandemic. The High Court taking into consideration that the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 extended the date till 30.09.2020 and the appellant having approached the Court prior to 30.09.2020 allowed the appellant to remit the taxes by 17.09.2021 subject to the condition that the appellant shall also pay interest @ 15%. Thus, the said judgement was passed by the High Court in the peculiar facts and circumstances of the case and cannot be of any help to the noticee.

35. In any case, it is the Designated Committee who has to decide whether the dues has been paid by the noticee within the stipulated time and whether any discharge certificate is to be given in the matter. Since, the Designated Committee has not given any discharge certificate in the matter, the relief cannot be extended by me.

36. The next contention of the noticee is that the provisions of Chapter V of the Finance Act, 1994 were omitted vide Section 173 of the CGST Act, 2017 and thus levy of service tax was done away with, as Section 6 of the General Clauses Act, 1897 applied only to repeals and not to omissions. They have also cited the judgement of the Supreme Court in the case of *Rayala Corporation Vs Directorate of Enforcement* [1969(2) SCC 412]. The emphasis of the noticee is that

the provisions of Chapter V of the Finance Act, 1994 were omitted with effect from 01.07.2017. The saving of the rights accrued under the prior legislation is available only for the repealed legislations in terms of section 6 of the General Clauses Act, 1897 and thus there is no saving of the act done under the Finance Act, 1994 after the GST Act came into existence and the Finance Act, 1994 omitted under section 173 of the CGST Act, 2017.

37. Service Tax was introduced vide Chapter V of the Finance Act, 1994. The said Act was omitted vide Section 173 of the CGST Act, 2017. However, some of the rights, privileges, obligation, or liability acquired, accrued or incurred under the erstwhile Finance Act, 1994 was saved vide Section 174(2) of the CGST Act, 2017. For ease of reference, the Section 174 of the CGST Act, 2017 is reproduced below: -

“Repeal and saving. “174. - (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”; as the case may be) to the extent mentioned in the sub-section (1) of Section 173 shall not -

- (a) revive anything not in force or existing at the time of such amendment or repeal; or**
- (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or**
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:**

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

- (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or**
- (e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;**

(f) *affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.*

38. As per Section 174 (2) (d), the repeal of the Finance Act, 1994 shall not affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts. Similarly Section 174(2)(e) lays down that the repeal will not affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed. Thus, the submission of the noticee that that no liability can be fastened in respect of any alleged violation or non-compliance of the provisions contained in Chapter V of the Finance Act, 1994 as the same was omitted vide Section 173 of the CGST Act, 2017 is bereft of any substance as the saving clause has been provided in Section 174 of the CGST Act, 2017 which saves rights, privileges, obligation, or liability acquired, accrued or incurred under the Finance Act, 1994.

39. The noticee has, however, raised a contention that since Finance act, 1994 was **omitted** under section 173 of the CGST Act, 2017, the rights accrued under the said Finance act, 1994 is not available as General Clauses Act, which saves such rights under the prior legislation empowers the Central Government to initiate any proceedings under the **repealed** legislations only. In support of the argument, the noticee has relied on the judgment of the Supreme Court in the case of *Rayala Corporation Vs Directorate of Enforcement* [1969(2) SCC 412]. I find that the said judgement was discussed by the Supreme Court in the case of *Fibre Boards (P) Ltd. v. Commissioner of Income Tax* — (2015) 376 ITR 596 (SC), wherein it was held that an omission would also amount to a repeal. It was further held that the ratio of the constitution bench of the Supreme Court in the case of *Rayala Corporation* cannot be said to be a ratio-decidenti and is really in the nature of obiter dicta.

40. The next contention of the noticee is that extended period of limitation cannot be invoked as all the required details are reflected in their financial records, income tax returns and audited accounts. They have also submitted that they have voluntarily declared their tax dues even without the Department pointing it out and therefore no suppression can be alleged.

41. Suppression is a question of fact to be established in each case. In the instant case, the noticee has voluntarily declared the taxes under the SVLDR Scheme, 2019. The Scheme was introduced to enable the assesses to settle their pending disputes in relation to service tax dues and levies under the old service tax regime. The disputes which could be settled under the scheme wereas under: -

(i) A show cause notice or appeals arising out of a show cause notice pending as on the 30th day of June, 2019

(ii) An amount in arrears

(ii) An enquiry, investigation or audit where the amount is quantified on or before the 30th day of June, 2019

(iv) A voluntary disclosure.

Thus, the scheme was an opportunity to settle the dispute once and for all, and an amnesty to past sins in a regulated manner. It is seen that the declaration made by the noticee falls under (iv) above. The voluntary disclosure made by the noticee has not been revealed to the Department in any of their returns filed by the noticee before the Department. For the year 2014-15 and 2015-16, the difference payable was due to the difference in the gross receipts shown in the balance sheet vis-à-vis the ST-3 returns. For the year 2016-17 and 2017-18, though the noticee had a service tax liability of Rs. 45,19,777/- and Rs. 14,90,300/- respectively, the noticee had not cared to file ST-3 till the issuance of SCN. Thus, it emerges that the intention of the noticee was all along to evade payment of taxes as they had never declared the excess sales in the year 2014-15 and 2015-16 in their returns. Further, going a step further, the noticee did not even file the returns for the year 2016-17 and 2017-18. It was only when the Government came up with the amnesty scheme, that the noticee opted to disclose the taxes which they had to legally pay. It is surprising that the noticee now claims that they have not suppressed the tax when all along their intention was not to declare the correct figures to the Department. It was an outright evasion of the taxes, which would have remained unnoticed but for the introduction of the amnesty scheme.

42. The noticee has also contended that there is no suppression as the figures provided by them are reflected in their books of account, audited financial statements and income tax returns, thus they had no intention of suppression of facts. They have also relied upon the following judgements, to drive home their point that there should be a deliberate act of evasion of tax.

(i) *Pahwa Chemicals (P) Ltd Vs CCE Delhi* [2005(189) ELT 257 (SC)]-it was held that failure to declare does not amount to mis-declaration or willful suppression. There should be some positive act on the part of part to establish wither willful mis-declaration or willful suppression is must.

(ii) *Alisha Enterprise Vs CCE*- it was held that when charge of deliberate non-payment of service tax due to suppression of facts or malafide intention of the appellant has not been proved from SCN, extended period of limitation can be invoked only when the person liable to pay tax is intentionally or deliberately involved in evasion of service tax.

(iii) *General Security & Information Service Vs CST* [2021 (52) GSTL 598 (Tri-Kol)]- it was held that law is well settled that in the absence of any proven or established allegations of existence of active intent to defeat the law or to cheat the revenue [expression used in Section 11A of the Central Excise Act "fraud or willful misrepresentation or suppression of facts"] the revenue cannot claim the benefit of an extended period of limitation.

(iv) *Ace Creative Learning Pvt. Ltd. v. Commr of CT*[2021 (51) GSTL 393 (Tri.-Bang.)- it was held that extended period of limitation cannot be invoked where Revenue's case is based on balance sheet, returns and other records of the assessee.

43. In the instant case, there is a positive act by the noticee to evade taxes, as the noticee had suppressed their gross receipts vis-à-vis the ST-3 returns. In 2016-17 and 2017-18, they did not even bother to file the ST-3 returns. Thus, there was a deliberate act and an active intent on the part of the noticee to evade taxes but for the launch of the SVLDR scheme. The noticee is also trying to import the theory of universal knowledge by stating that since they have declared the gross receipts in their balance sheet, returns and other records maintained by them, they have not suppressed the facts. It is true that a balance sheet is a public document but the same is not available to the Department at large. Similar is the case with the other records which are maintained by an assessee which are not submitted by them to the Department. The figures of value of services provided are only communicated to the Department through the ST-3 returns submitted by the assessee. In the instant case, the noticee has chosen to communicate the incorrect figures to the Department. For two years, the noticee did not even communicate their figures as the returns were never submitted. It was only declared under the SVLDR scheme. Thus, suppression of facts with an intention to evade tax is squarely applicable in their case.

44. I also find that the said Noticee did not file their ST-3 returns in timely manner for the period from October, 2014 to March, 2016. Also, as mentioned earlier they have not filed their ST-3 return for the period from April 2016 to June 2017. The details of late fees for delay in filing return is as under:

F. Y.	Period	Due Date	Date of return filing	No. of days delayed	Late fees Payable (Rs.)	Late Fees Paid (Rs.)	Difference Payable
2014-15	Oct-March	25.04.2015	01.08.2015	98	7800	0	7800
2015-16	April-Sep	25.10.2015	20.02.2016	118	9800	0	9800
	Oct-March	29.04.2016	27.05.2016	28	1000	0	1000
2016-17	April-Sep	25.10.2016	Not Filed				
	Oct-March	25.04.2017	Not Filed				
2017-18	April to June	15.08.2017	Not Filed				
Total					18600	0	18600

45. The legal provisions for filing of ST-3 returns are as under:

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.

46. From the above legal provisions, I find that the said noticee failed to file ST-3 returns for the period from Oct-2014 to March 2016, within the stipulated time limit, thereby violating the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules. Hence, as per the table mentioned in para no 44, their total late fees of Rs. 18600/- is to be recovered from them of as per the above legal provisions.

47. Coming to the proposal of penal actions under Section 77 of the said Act, I find that since they have failed to file ST-3 return for the period from April, 2016 to June 2017, they are liable to a penalty under Section 77(2) of the said Act.

48. As found above, in the instant case, demand of service tax of Rs. **51,58,193/-** is required to be confirmed under the proviso to the Section 73 of the said Act and therefore I find that they are required to pay Interest on the said amount of Rs. **51,58,193/-** under Section 75 of the said Act.

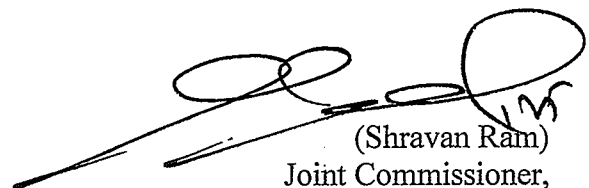
49. However, since in the instant case, it is found that the non-payment of Service tax to the tune of Rs. **51,58,193/-** is attributed to willful mis-statement and mis-declaration with an intent to evade Service Tax, I find that penalty under Section 78 of the Finance Act, 1994 is required to be imposed upon them.

50. In view of the above facts, I pass the following order.

ORDER

1. I confirm the demand of Service Tax of Rs. **51,58,193/-** (Rupees Fifty-One Lakhs Fifty-Eight Thousand One Hundred and Ninety-Three Rupees Only) leviable on the taxable service provided by them during the period Oct. 2014 to June-2017 under the proviso to the Section 73(1) of the Finance Act, 1994 by invoking extended period of five years;
2. I appropriate an amount of Service Tax of Rs. **51,58,193/-** (Rupees Fifty-One Lakhs Fifty-Eight Thousand One Hundred and Ninety-Three Rupees Only) paid vide Challans No 20201204183149821419, 20201204183149821409, 20201204183149821702, 20210309145647845155 and 20210309150517846636 dated 04-12-2020, 04-12-2020, 04-12-2020, 09.03.2021 and 09.03.2021 respectively by the taxpayer against the demand at S.No. (1) above
3. I order to recover Interest of at the applicable rate under the provisions of Section 75 of the Finance Act, 1994 in respect of confirmed demand at (1) above;
4. I order to impose the penalty of Rs. 10,000/- u/s 77(2) of the Finance Act, 1994.

5. I order to recover Late fees of Rs. 18,600/- (Rs. Eighteen Thousand and Six Hundred only) in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 for not filing their ST-3 returns for the period from Oct.-2014 to March-2016 .
6. I impose penalty of Rs. **Rs.51,58,193/-** (Rupees Fifty-One Lakhs Fifty-Eight Thousand One Hundred and Ninety-Three Rupees Only) under the provisions of Section 78(1) of the Finance Act, 1994 against the demand confirmed as mentioned above. However, in view of clause (ii) of the second proviso to Section 78(1), if the amount of Service Tax confirmed and Interest thereon is paid within period of thirty days from the date of receipt of this order, the penalty shall be twenty-five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the period of thirty days.


(Shravan Ram)
Joint Commissioner,
Central GST-Ahmedabad South

BY Registered Post A.D./Email

F.No STC/04-45/Metro Security/O&A/20-21

Dated 06.01.2023

To,

M/s. Metro Security and Technical Services,
31,42, Astha Avenue, Opp. R.T.O.,
Subhash Bridge Circle, Ahmedabad-380027

Copy to:

- 1) The Principal Commissioner, CGST, Ahmedabad South.
- 2) The Assistant Commissioner, CGST, Div.-VII, Ahmedabad South.
- 3) The Superintendent, CGST, AR-V, Division-VII, Ahmedabad-South.
- 4) The Assistant Commissioner, CGST, TAR Section, HQ, Ahmedabad South.
- 5) The Superintendent, CGST, System HQ, Ahmedabad South for uploading on the website.
- 6) Guard File