



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
अपराध और अधिनिर्णय खंड, छठी मंजिल, अम्बावाड़ी GST,
भवन, अहमदाबाद ३८००१५.



6th Floor, O&A Section, GST Bhavan, Ambawadi 380015

DIN-20220564WS000000ECD4

निबन्धित पावती डाक द्वारा/ By REGISTERED POST A.D.
फा./सं. F.No. STC/4-54/Brittman/O&A/20-21

आदेश की तारीख/Date of Order : 06-05-2022

जारी करने की तारीख/Date of Issue: 06-05-2022

द्वारा पारित/Passed by:- सुनील कुमार सिंह प्रधान, आयुक्त
SUNIL KUMAR SINGH, PRINCIPAL COMMISSIONER

मूल आदेश संख्या / Order-In-Original No. : AHM-EXCUS-001-COM-001-22-23
Dated 06.05.2022.

1. जिस व्यक्ति उसे व्यक्तिगत प्रयोग के लिए, भेजी जाती है को यह प्रति (यों) निःशुल्क प्रदान की जाती है।
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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्कद उत्पां, अ, शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, सीमा शुल्क, O-20, मेघाणीनगर 016 380-अहमदाबाद, न्यु मेन्टल हॉस्पिटल कम्पाउन्ड, को सम्बोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

3. उक्त अपील प्रारूप सं. एस.टी.-5 दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) 2001, नियमावलीके नियम में विनिर्दिष्ट व्यक्त (2) के उप नियम 3ियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो उसकी भी उतनी, ल से सम्बंधित सभी। अपी(उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए) ही प्रतियाँ संलग्न की जाएँ दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. S.T-5. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दा, खिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी, (उनमें से कम से कम एक प्रमाणित प्रति होगी)

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

.5 अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

.6 अधिनियम की धारा वहां ,बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है 35 यक रजिस्ट्रार के नाम पर रेखांकित के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहा माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरुद्ध सीमा शुल्क उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के , 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Tribunal 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".

8. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूचीके अंतर्गत निर्धारित किए अनुसार संलग्न 6 मद ,1-पया का न्यायालय शुल्क टिकट लगा होना चाहिए।रु 1.00 किए गए आदेश की प्रति पर

The copy of this order attached therein should bear a court fee stamp of Rs. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

9. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।
Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -

Sub : Show Cause Notice No. SCN No. STC/4-54/Brittman/O&A/20-21 dated 31.12.2020 issued to M/s Brittman India Private Limited, 5670, Raja Complex, Ground Floor, Vijay Cross Road, Navrangpura, Ahmedabad-380009

BRIEF FACTS OF THE CASE:

M/s Brittman India Private Limited, having service tax registration number AAECB7550RLD001 for their office at 5670, Raja Complex, Ground Floor, Vijay Cross Road, Navrangpura, Ahmedabad-380009 (here-in-after referred to as the assessee for the sake of brevity) is a partnership firm engaged and are earning income under the head of Professional Fees and Commission Income. 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 Brittman India Private Limited is now registered under the Jurisdiction of the Ahmedabad South Commissionerate, Central Goods and Service Tax.

2. The assessee had filed one declaration in Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under voluntary disclosure category and filed SVLDRS-1 form on 31.12.2019. Further, designated committee has issued SVLDRS-3 on 07.12.2019. The details of SVLDRS-1 and SVLDRS-3 are as under: -

S.NO.	Period	ARN NO	SVLDRS-3 No.	Duty Declared in SVLDRS-1
1	April-14 to Jun-17	LD3012190006747	L160320SV300092	1,51,15,378
Total				1,51,15,378

2.1. As per Section 127(5) of the Finance (No.2) Act 2019, (5) The declarant shall pay electronically through internet banking, the amount payable as 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 Brittman India Private Limited were required to pay tax dues amount as per SVLDRS-3 up to 30.06.2020 but M/s Brittman India Private Limited had not paid the tax dues amount. Accordingly, Service tax inquiry was initiated against M/s Brittman India Private Limited for the period April-2014 to June-2017.

3. Since the said assessee had voluntarily declared their service tax liabilities but not paid the same within the stipulated time frame in terms of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 inquiry was initiated against the said assessee. Summons dated 10.12.2020 was issued to M/s Brittman India Private Limited wherein they were directed to produce the following documents:

- a) Balance Sheets for the period 2014-15 to 2017-18
- b) Profit & Loss account for the period 2014-15 to 2017-18
- c) Income Tax returns and Form 26AS for the period 2014-15 to 2017-18
- d) ST-3 returns for the period 2014-15 to 2017-18
- e) Sales ledgers alongwith respective invoices for the period 2014-15 to 2017-18

The said summons has been delivered to the assessee on 12.12.2020 as per the report of Speed Post available on the website of the Postal authorities. However, the said assessee did not appear before the investigating officer and failed to produce the financial documents from April-2014 to June-2017.

4. In absence of production of financial documents by the said assessee, the Balance sheet for the year financial years 2014-15 to 2017-18 were downloaded from the website of Register of Companies and preliminary verification was carried out for the period from April-2014 to June-2017. The Profit & Loss Account of the said assessee indicated that they had received income

under the heads of 'Professional Fees' and 'Commission' during the years from 2014-15 to 2016-17. Further, it was observed that the assessee had not filed their ST-3 returns for the said period.

4.1 Under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, the Government had offered an option to the taxpayers to voluntarily declare the service tax/ central excise duty not paid by them and pay such liability within the prescribed time limit. In view of the provisions of the scheme, the assessee had filed a declaration under Sec. 125 of the Finance (No. 2) which is a conclusive proof of the admission on the part of the said assessee that they had provided taxable services in terms of the provisions of Sec. 65B(51) of the Finance Act, 1994. Thus, it was observed that by their own admission, the assessee had provided taxable services.

4.2 In the instant case, it was observed that the assessee was engaged in providing taxable services and had not discharged their service tax liabilities for the period from 2014-15 to 2016-17. Further, it appeared that the assessee was well aware of their service tax liabilities in as much as they voluntarily declared an amount of service tax not paid under SVLDRS-1. Yet they failed to pay the service tax amount as declared by them within the prescribed time limit. Further, the assessee did not respond to the summons dated 10.12.2020 and failed to produce the called for documents. They also failed to appear before the investigating officer. By resorting to such tactics it appeared that the assessee was attempting to way-lay the investigation process and sought shelter under the provisions of limitation.

4.3 Under such circumstances, the revenue had no option but to resort to computation of the service tax liability on the basis of the relevant material which is available on records in terms of the provisions of Section 72 of the Finance Act, 1994 which reads as under:

If any person, liable to pay service tax, —

(a) fails to furnish the return under section 70;

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

4.4. In view of the powers under Section 72, the investigation officers downloaded the Balance Sheet/ Profit & Loss Account for the years 2014-15 to 2016-17 from the official website of the Registrar of Companies. The income shown in the Profit & Loss Account was on a much higher side than the service tax liability declared by the assessee under their SVLDRS-1 declaration. Since the assessee was admittedly providing taxable services and had not appeared before the investigating officer, the total income shown in the Profit & Loss Account as income from Professional Fees and Commission Income were required to be treated as consideration towards providing taxable services. Accordingly, the calculation of service tax liability for the period from 2014-15 to 2016-17 was worked out as under: -

Period	Revenue as per Balance Sheet			Total	ST Payable
	Professional Fees	Commission Income	Other Income		
2014-15	71881988	1063974	0	72945962	9016121
2015-16	113644912	1436624	40908	115122444	16692754
2016-17	269899419	4670472	75762	274645653	41196848
Total	455426319	7171070	116670	462714059	66905723

5. For the purpose of computation of service tax liability for the period from 2014-15 to 2016-17 the income as shown in the Profit & Loss Account of the audited financial statements of the assessee has been considered as the taxable value in terms of the principles of best judgment assessment on the following grounds:

- The entire income has been accrued owing to some professional activities undertaken for their clients since the income head is shown as 'Professional Fees'. Also the income head 'Commission' indicates that they have undertaken some intermediary services on behalf of their clients for which consideration has flowed in the form of Commission.
- The assessee are providing taxable services by their own admission as evident from their SVLDRS-1 declaration
- The assessee have not paid even the declared service tax dues and not filed the ST-3 returns

6. In view of the above, it appeared that the assessee had not paid service tax totally amounting to Rs. 6,69,05,723/- during the period October-2014 to March-2017 as discussed here in above and the same was required to be recovered from them under proviso to Section 73 of the Finance Act, 1994. Further, it appeared that the assessee had contravened the following provisions of law:

- Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they failed to properly assess the service tax due and failed to file the ST-3 returns.
- Section 68(1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they failed to pay Service Tax in the time and manner as prescribed on the above said services.
- Section 14 of the Central Excise Act, 1944 as made applicable to service tax matters vide Section 83 of the Finance Act, 1994 in as much as they failed to appear before the investigating officer and produce the documents called upon under summons

7. In view of the above, it appeared that the assessee had not paid service tax to the tune of Rs. 6,69,05,723/- (as detailed at Annx. A to the notice) during the period from 2014-15 to 2016-17. Further, it appeared that the assessee had failed to file the ST-3 returns and pay service tax within the stipulated time frame. Thus, it appeared that the said service tax to the tune of Rs. 6,69,05,723/- had not been paid by resorting to suppression of facts. Section 70 of the Finance Act, 1994 stipulated 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, 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.

7.1 In the instant case the assessee had failed to properly assess the service tax liability and also failed to file the ST-3 returns. Further, they declared the service tax dues under SVLDRS-1 and failed to pay the declared amount within the prescribed time frame. Thus, they have resorted to suppression of material facts by not filing the ST-3 returns and reflecting the taxable value therein. These facts only came into notice only when the enquiry was initiated in light of the act of non-payment of the declared service tax dues under SVLDRS-1. Even during the course of investigation, the assessee had resorted to non-submission of documents and failed to honor the summons. Had the enquiry been not initiated, the said facts would never have seen the light of the day. Therefore, the said Service Tax of Rs. 6,69,05,723/- not paid by them is liable to be recovered by invoking the extended period of limitation as provided for under proviso to Section 73(1) of the Finance Act, 1994 along with interest in terms of the provisions of Section 75 of the Finance Act, 1994.

7.2 In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfill their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by them for normal business purposes are 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 is contravened or there is a breach of trust placed on the service provider. In the instant case the assessee has not complied with the provisions of Service Tax. They have received cash amount from customers but did not disclose the same before department nor paid service tax thereon and these facts came to the knowledge of the Department only when the enquiry was initiated by Department. This act of the said assessee is tantamount to willful misstatement and suppressing the facts with an intention to evade service tax payment. The assessee is also liable for penal action as per Section 78 of the Finance Act, 1994 for making willful misstatement and suppression of facts from the department, with an intention to evade service tax payment.

8. Further, the assessee had rendered themselves liable to penalty in terms of the provisions of Section 77(1)(c) of the Finance Act, 1994 in as much as they failed to produce the documents called for and appear before the investigating officer in response to the summons. Moreover, the assessee have rendered themselves liable to penalty under Sec. 77(2) of the Finance Act, 1994 in as much as they failed to file the periodical ST-3 returns for the period from 2014-15 to 2016-17.

9. 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.

10. The period of investigation involves non-payment /short payment of service tax from October-2014 to March-2017. M/s Brittman India Private Limited had not filed ST-3 return for the period October-2014 to Sep-2015 and the last date of filing ST-3 return for the period October-2014 to Sep-2015 was 24.10.2015. Hence the last date of issuance of Show Cause Notice, after invoking extended period of limitation would have been on 23.10.2020 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 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 further extended up to 31.12.2020 vide notification F.No. 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, 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.

11. The provisions of repealed Finance Act, 1994 and Central Excise Act, 1944 have been 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 are enforced for the purpose of demand of tax, Interest etc and imposition of penalty under this notice.

12. Therefore, M/s Brittman 5670, Raja Complex, Ground Floor, Vijay Cross Road, Navrangpura, Ahmedabad-380009, were served a show cause notice No. STC/4-54/Brittman/O&A/20-21 dated 31.12.2020 read with corregendum dated 08.03.2022 whereby they were called upon to show cause to the Principal Commissioner, Central Goods & Service

Tax, Ahmedabad South having his office at 6th floor, GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad-15 as to why:-

- (i) Service tax to the tune of Rs. 6,69,05,723/- (Rs. Six Crore Sixty Nine Lakh Five Thousand Seven Hundred Twenty Three Only), as detailed at Annx. A to this notice, leviable on the taxable service provided by them during the period October-2014 to March-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 under Section 77(2) for not filing the ST-3 returns;
- (iv) Penalty in terms of the provisions of Sec. 77(1)(c) of the Finance Act, 1994 should not be imposed on them for failure to produce the documents called for and appear before the investigating officer in response to the summons;
- (v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for the above mentioned contraventions;

DEFENSE REPLY:

13.1 The assessee had filed their reply to the show cause notice vide letter dated 22.05.2021 which was received on 06.06.2021 in which they contended that they were engaged in providing services of works contract, business auxiliary services and manpower recruitment services and were registered with the service tax department. The proposals made in the show cause notice were illegal and unsustainable. The inquiry was conducted on the basis that they had not made payment of Rs.1,51,15,378/- under Sabka Vishwas Scheme 2019 within stipulated time; but they had made payment on 30.06.2020 and the payment was appropriated by the department. They were issued SVLDRS-3 for making payment of Rs.1,51,15,378/- under the scheme which meant that for the period from 2014-15 to 2017-18 (till June 2017) the service tax liability was only Rs.1,51,15,378/-. Thus the proposal to demand service tax of Rs.6,69,05,723/- was erroneous and illegal. They had made payment against SVLDRS-3 before the due date and there was no delay in making payment and therefore eligible for discharge certificate and no demand of service tax could be raised for the same period. They submitted that demand for the extended period from FY 2014-15 to FY 2016-17 was also illegal. The show cause notice has wrongly alleged that they had not provided any documents to the department. They had submitted all relevant documents during the process of filing declaration under Sabka Vishwas Scheme 2019 and Designated Committee had issued SVLDRS-3. They submitted that the total service tax liability for the period FY 2014-15 to FY 2017-18 (till June 2017) was Rs.7,39,87,730.72 and they had made periodical payments of service tax aggregating to Rs.5,88,72,353/- through challans and the service tax amounting to Rs. 1,51,15,378/- was actual amount which remained to be paid which they had voluntarily disclosed.

13.2 The assessee submitted that there was no liability of service tax as they opted to settle the case under Sabka Vishwas Scheme 2019 for the period FY 2014-15 to FY 2017-18 (till June 2017) and made payment of Rs. 1,51,15,378/- which was appropriated by the department and demand for the same period cannot be raised again issuing show cause notice.

13.3 They submitted that time limit for making payment against SVLDRS-3 was initially 30 days from the date of issuance of SVLDRS-3 but due to COVID-19 the time was extended upto 30th June 2020. The assessee submitted that they attempted to generate challan cum mandate from on 30th June 2020 several times but there was some technical error on the website. Therefore they contacted department and copy of mandate form was physically collected and processed the payment on 30th June 2020 through NEFT with their bank. However, due to some technical reasons, the payment through NEFT was not credited to the department's account on the same day, but was credited on the next day i.e. 1st July 2020. On 06.07.2020 they submitted a

letter to the Superintendent (SVLDRS) intimating the payment made, but the Designated Committee did not issue the discharge certificate in form SVLDRS-4 on the ground that the time limit for making payment expired on 30.06.2020 and the payment was credited in the department's account on 01.07.2020.

13.4 They submitted that since the payment was made by them not credited to the department's account on the same day i.e. 30.06.2020 but credited on 01.07.2020 cannot take away the benefit of the Scheme extended to taxpayers like them. They submitted that Hon'ble Supreme Court in a Suo Moto Writ Petition (Civil) No.3/2020 has ordered that for all cases where limitation would have expired between 15.03.2020 till 14.03.2021; the period of limitation would stand extended and accordingly the limitation for making payment under the Sabka Vishwas Scheme has not expired.

13.5 The assessee submitted that no enquiry or investigation was carried out at their premises and the demand is proposed on the basis of conjecture and surmises. They submitted that they were not given any chance to explain that no service tax was payable because most of the amounts were already paid by them during the relevant period. When the designated committee had not objected to the amount of Rs.1,51,15,378/- declared as their outstanding service tax liability, the revenue has no authority to demand service tax of Rs.6,69,05,723/-.

13.6 They further submitted that demand of Rs.6,69,05,723/- is wrong because the show cause notice has not given any reference to Rs.5,88,72,353/- already paid by them during the period FY 2014-15 to 2017-18 (till June 2017). The assessee also submitted that the demand has been wrongly calculated as the period of April to June 2017 was not included in the show cause notice. They have further submitted that rate of service tax for the period from April 2015 to May 2015 was 12.36% and from June 2015 to October 2015, the rate was 14%, but the show cause notice has calculated the service tax at the rate 14.5%. Further, rate of service tax for the period from April 201 to May 2016 was 14.5%, but the show cause notice has calculated the service tax at the rate 15%. They have also submitted that they were mainly providing works contract service and service tax is to be calculated on 70% of the value of the total amount collected for provision of works contract service.

13.7 The assessee further contended that demand of service tax cannot be made merely only the basis of figures appearing in financial records. They submitted that Hon'ble Tribunal in case of *Kush Constructions-2019 (24) GSTL.606 (Tri-All)* held that difference in figures reflected in ST-3 returns and Form 26AS filed under Income Tax Act 1962 cannot be basis of raising service tax demand without examining the reasons for such difference and without examining whether amount as reflected in said income tax return was the consideration for providing any taxable services or the difference was due to any exemption or abatement. They have also relied upon the cases of *Go Bindas Entertainment Pvt. Ltd-2019 (27) GSTL.397 (Tri-All)*, *Vijay Packaging Systems Ltd-2010 (262) ELT.832 (Tri-Bang)*, *Triveni Castings Pvt Ltd-2015 (321) ELT.336 (Tri-Del)*, *K.J. Diesels (P) Ltd-2000 (120) ELT.505 (Tri)*.

13.8 The assessee submitted that demand of service tax has been made without pointing out nature of service and its classification as it did not provide whether the service was a taxable service within terms of section 65 (105) of the Finance Act 1994 and hence ex-facie illegal and unsustainable. They submitted that they have filed the declaration under Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 for the amount of Rs.1,51,15,378/- which they had admitted and paid under challan dated 30.06.2020. Even otherwise, a declaration filed by them under SVLDRS cannot be used as a weapon for demand of service tax. They submitted that revenue ought to have conducted separate enquiry to prove that they had any pending service tax liability. The assessee submitted that no particular service is mentioned in the show cause notice for demand of service tax which is totally illegal. They relied upon the cases of *M.P. Windfarm Ltd-2017 (51) STR.413 (Tri-Del)* and *Avatar & Company-2017 (48) STR.66 (Tri-Mum)*.

13.9 The assessee submitted that invocation of larger period of limitation is also unjustified and unsustainable because there has not been any suppression of facts or willful misstatement by them. All the details and figures have been fully recorded in their books of account and such financial records maintained by them in the normal course of business and therefore there is no justification in the allegation of any suppression of facts. They further submitted that demand for service tax based on the basis of statutory records of the assessee is not sustainable and relied upon the cases laws of *DCM Engg. Products-2002 (147) ELT.820*, *Pranav Vikas (India) Ltd-*

2002 (148) ELT.963 and BHEL-1997 (18) RLT.573. The assessee also contended that balance sheet being a public documents, any demand raised on the basis of information appearing in the balance sheet after invoking extended period of limitation was illegal. They relied upon the cases of *Hindalco Industries-2003 (161) ELT.346 (Tri)*, *Kirloskar Oil Engines Ltd-2004 (178) ELT.998 (Tri)* and *Martin & Hariss Laboratories Ltd-2005 (185) ELT.421*.

13.10 The assessee further submitted that the show cause notice has ignored the fact that they have made payment of Rs.5,88,72,353/- and requested to consider the said payment towards service tax liability. They have also submitted that if Rs.1,51,15,378/- deposited under SVLDRS is not accepted as closure of case, such amount is required to be adjusted against the service tax demand.

13.11 The assessee submitted that they have made voluntary disclosure under the scheme and therefore the allegations of suppression of facts are unsustainable in the eyes of law and larger period of limitation cannot be invoked. They contended that when the transaction and their details were available from audited books of account and financial records, they could not be accused of suppression of facts. Relying on the cases laws of *Continental Foundation Ji. Venture-2007 (216)ELT.177 (SC)* and *Jaiprakash Industries Ltd-2002 (146) ELT.481 (SC)*.

13.12 The assessee further contended that the proposal for imposition of penalty under the provisions of Section 78 of the Finance Act 1994 also deserves to be vacated as there is no justification in demand of service tax. They submitted that the matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd-1978 ELT.(J159)* wherein it is held that penalty should not be imposed merely because it was lawful to do so. The assessee further argued that penalty proposed to be imposed under Section 77(1)(c) of the Finance Act is also untenable because all relevant documents regarding their service tax liability were submitted to the department. They also submitted that penalty under Section 77(2) is also unsustainable because this section provides for penalty not exceeding ten thousand rupees on any person where no penalty is separately provided. They submitted that penalty under Section 78 has already been proposed in the show cause notice and therefore separate penalty under Section 77(2) cannot be proposed. The assessee also contended that provisions of Section 75 are not attracted in this case.

14. Shri Niren Panchal, Director of the noticee appeared in the virtual hearing. He reiterated the submissions made in the written reply dated 22.05.2021. He stated that they had approached Hon'ble Gujarat High Court against not considering the payment made by them towards the SVLDRS declaration filed by them for which payment was processed on 30th June 2020 but was actually transferred to Government account on 1st July 2020. He requested to wait for the decision of Hon'ble Gujarat High Court before taking a decision.

DISCUSSION AND FINDINGS

15. I have carefully gone through the facts of the case on record and the submissions made by the assessee. The circumstances under which the present show cause notice was caused to be issued are that the assessee had filed declaration in Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 where in Service tax of Rs.1,5,15,378/- was declared to be payable. Despite issuing SVLDRS-3 by the designated committee, the assessee failed to made payment within the stipulated time as per the said scheme. As per the scheme the last date for making payment was 30th June 2020. Since the said assessee had voluntarily declared their service tax liabilities but not paid the same within the stipulated time frame in terms of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 an inquiry was initiated against the said assessee. Summons dated 10.12.2020 was issued to M/s Brittman India Private Limited wherein they were directed to produce financial documents. However, the said assessee did not appear before the investigating officer and failed to produce the financial documents from April-2014 to June-2017.

16. As the assessee did not produce financial documents, the Balance sheet for the year financial years 2014-15 to 2017-18 were downloaded from the website of Register of Companies and preliminary verification was carried out for the period from April-2014 to June-2017. The Profit & Loss Account of the said assessee indicated that they had received income under the heads of 'Professional Fees' and 'Commission' during the years from 2014-15 to 2016-17. Further, it was observed that the assessee had not filed their ST-3 returns for the said period.

Accordingly instant show cause notice demanding service tax was issued. Though the assessee has filed appeal before Hon'ble Gujarat High Court against non-issue of SVLDRS-4 Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 by the designated committee, I find that there is no stay granted by the Court in proceeding with the show cause notice. In fact, at paragraph 17 of the Special Civil Application filed, it has been mentioned that the show cause notice is not the subject matter of the petition. Therefore, I proceed to decide the show cause notice on its merits.

17. The assessee, in their defense submission, contended that the proposal to demand service tax of Rs.6,69,05,723/- was erroneous and illegal as they had made payment against SVLDRS-3 before the due date and there was no delay in making payment and therefore eligible for discharge certificate and no demand of service tax could be raised for the same period; that they had submitted all relevant documents during the process of filing declaration under Sabka Vishwas Scheme 2019 and Designated Committee had issued SVLDRS-3; that they submitted that the total service tax liability for the period FY 2014-15 to FY 2017-18 (till June 2017) was Rs.7,39,87,730.72 and they had made periodical payments of service tax aggregating to Rs.5,88,72,353/- through challans and the service tax amounting to Rs. 1,51,15,378/- was actual amount which remained to be paid which they had voluntarily disclosed.

18. In this regard, I find that under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, the Government had offered an option to the taxpayers to voluntarily declare the service tax/ central excise duty not paid by them and pay such liability within the prescribed time limit. The filing of declaration is a conclusive proof of the admission on the part of the said assessee that they had provided taxable services in terms of the provisions of Sec. 65B(51) of the Finance Act, 1994. Thus by their own admission, the assessee had provided taxable services.

19. Regarding the claim of the assessee that they had submitted all relevant documents during the process of filing declaration under SVLDRS 2019, I have gone through the concerned SVLDRS declaration and find that at the time of filing the declaration under SVLDRS 2019, no document was required to be produced and no document was submitted before the designated committee. Therefore, the claim made by the assessee regarding submission of relevant documents is fallacious.

20. I also find that the assessee was provided opportunity to explain their case when summons were issued to them to produce documents and to give statement. The assessee, however, chose not to avail the opportunity and remained silent and not provided any documents to the department. They were asked to produce the balance sheet, profit and loss account, service tax returns etc in order to ascertain the nature of service provided and for verification of payment service tax, if any. By not providing any of the documents asked for by the department the assessee closed their opportunity to justify the fairness of the declaration made by them. The department has, therefore, been left with no other option but to obtain the documents by other means available with them. The department was constrained to gather the information of financial documents like profit and loss account, balance sheet etc from the website of Register of Companies. From the said records, it was observed that the assessee has earned income from professional services and commission. Therefore it is evident that they were providing services of professional service and business auxiliary service which are taxable services and had not discharged their service tax liabilities for the period from 2014-15 to 2016-17. The assessee was well aware of their service tax liabilities and the guilt is well written in the declaration made by them under the Scheme where they disclosed the liability to pay service tax. Under such circumstances, the computation of the service tax liability has to be done on the basis of the relevant material available on records in terms of the provisions of Section 72 of the Finance Act, 1994 which reads as under:

If any person, liable to pay service tax, —

(a) fails to furnish the return under section 70;

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into

account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

In view of the powers under Section 72, the investigation officers downloaded the Balance Sheet/ Profit & Loss Account for the years 2014-15 to 2016-17 from the official website of the Registrar of Companies. Since the assessee was admittedly providing taxable services and had not appeared before the investigating officer, the total income shown in the Profit & Loss Account as income from Professional Fees and Commission Income were required to be treated as consideration towards providing taxable services. The show cause notice has mentioned these services at paragraph 5 as under:

5. For the purpose of computation of service tax liability for the period from 2014-15 to 2016-17 the income as shown in the Profit & Loss Account of the audited financial statements of the assessee has been considered as the taxable value in terms of the principles of best judgment assessment on the following grounds:

- *The entire income has been accrued owing to some professional activities undertaken for their clients since the income head is shown as 'Professional Fees'. Also the income head 'Commission' indicates that they have undertaken some intermediary services on behalf of their clients for which consideration has flowed in the form of Commission.*

Therefore, the contention of the assessee, that the show cause notice has been issued without identifying the nature of service, is incongruous. In terms of Section 72, the service tax liability for the period from 2014-15 to 2016-17 is computed out as under: -

Period	Revenue as per Balance Sheet			Total	ST Payable
	Professional Fees	Commission Income	Other Income		
2014-15	71881988	1063974	0	72945962	9016121
2015-16	113644912	1436624	40908	115122444	16692754
2016-17	269899419	4670472	75762	274645653	41196848
Total	455426319	7171070	116670	462714059	66905723

21. Per contra, the assessee submitted that demand of Rs.6,69,05,723/- is wrong because the show cause notice has not given any reference to Rs.5,88,72,353/- already paid by them during the period FY 2014-15 to 2017-18 (till June 2017). While making such claim of payment of service tax, I observe, the assessee has not adduced any evidence in support. They have submitted only a statement (As per Annexure-I of their reply) showing the tax liability of Rs.5,88,72,353/-. They have produced neither any copy of challan making payment of service tax, nor copy of ST-3 return filed by them evidencing the payment of service tax. The assessee was asked to produce proof of payment of service tax and to produce ST-3 returns filed, if any, by letter dated 08.03.2022 and 24.03.2022 for which no reply has been given by them till date. The JAC was also requested to verify the veracity of the claim made by the assessee and the JAC, vide letter F.No.CGST/WS06/O&A/Misc/2021-22 dated 06.04.2022, reported that the assessee has not produced any evidence of payment and copy of return despite being asked to submit the same before him. He also reported that ST-3 returns of the above assessee for the period April 2014 to June 2017 are not available on AIO. The screenshot of the search for ST-3 return filed by the assessee is as under:

Mozilla Firefox

Central Board of Indirect Taxes and Customs
Ministry of Finance - Department of Revenue

Registration No. AAECB7350H0001

Tax Payer - Jurisdiction Search

GST - CE/ST	Registration No.	AAECB7350H0001
Registration Type	Central Excise	
Trade Name	BRITTMAN INDIA PVT LTD	
Legal Name	BRITTMAN INDIA PVT LTD	
Address	RAJA COMPLEX, GROUND FLOOR, VIJAY CROSS ROAD, NAVRANGPURA, 5670, rust, Gujarat- 380009	
Mobile No.	8128053792	
Email Id	shinartiwal@gmail.com	
Jurisdiction Code	WS0004	
Commissionerate Code	WS - AHMEDABAD SOUTH	
Division Code	D6 - DIVISION-VI - VASTRAPUR	
Range Code	04 - RANGE IV	
Status	ACTIVE	

Generated on: 21/10/2022 1:32 pm

Returns Archive List - Mozilla Firefox

Central Board of Indirect Taxes and Customs
Ministry of Finance - Department of Revenue

ST Returns Archive List

Select Jurisdiction: Z: AHMEDABAD C: AHMEDABAD SOUTH D: DIVISION-VI - VASTRAPUR R: RANGE IV

AAECB7350H0001

No Records Found

Returns Archive List - Mozilla Firefox

Central Board of Indirect Taxes and Customs
Ministry of Finance - Department of Revenue

CE Returns Archive List

Select Jurisdiction: Z: AHMEDABAD C: AHMEDABAD SOUTH D: DIVISION-VI - VASTRAPUR R: RANGE IV

AAECB7350H0001

No Records Found

From the above screenshots, it can be inferred that the assessee has neither paid any service tax nor filed service tax return. Therefore, it can be deduced that the assessee has made a bald claim and they do not have any such evidence with them about payment of tax and filing of ST-3 return. Accordingly, I hold that the demand of service tax has been correctly made in the show cause notice. However, it is on record that the assessee had made payment of Rs. 1,51,15,378/- as declared under Sabka Vishwas Scheme 2019 which was credited to the account on 1st July 2020. On 06.07.2020 they submitted a letter to the Superintendent (SVLDRS) intimating the payment made, but the Designated Committee did not issue the discharge certificate in form SVLDRS-4 on the ground that the time limit for making payment expired on 30.06.2020 and the payment was credited in the department's account on 01.07.2020.

22. The assessee also submitted that they were mainly providing works contract service and service tax is to be calculated on 70% of the value of the total amount collected for provision of works contract service. In this regard, I find that, the profit and loss account shows income from professional fee and commission income and hence the contention of the assessee that they have provided works contract service is fallacious. When the department has made demand on the basis of profit and loss account of the assessee, the onus shifts to the assessee to prove that the information provided there in are incorrect and they were required to adduce cogent evidence to prove otherwise. While making the claim of their providing works contract service, the assessee failed to produce even a single piece of tangible evidence in support of their claim like the claim of their making payment of service tax during the period under demand.

23. With regard to the contention of the assessee that the demand is hit by limitation, I find that the assessee had not paid service tax to the tune of Rs. 6,69,05,723/- (as detailed at Annx. A to the notice) during the period from 2014-15 to 2016-17 and had failed to file the ST-3 returns and pay service tax within the stipulated time frame. Thus it is evident that the said service tax to the tune of Rs. 6,69,05,723/- had not been paid by resorting to suppression of facts. Section 70 of the Finance Act, 1994 stipulated 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, 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.

In the instant case, I find that, the assessee had failed to properly assess the service tax liability and also failed to file the ST-3 returns. Further, they declared the service tax dues under SVLDRS-1 and failed to pay the declared amount within the prescribed time frame. Thus, they have resorted to suppression of material facts by not filing the ST-3 returns and reflecting the taxable value therein. These facts only came into notice only when the enquiry was initiated in light of the act of non-payment of the declared service tax dues under SVLDRS-1. Even during the course of investigation, the assessee had resorted to non-submission of documents and failed to honor the summons. Had the enquiry been not initiated, the said facts would never have seen the light of the day. Therefore, the said Service Tax of Rs. 6,69,05,723/- not paid by them is recoverable by invoking the extended period of limitation as provided for under proviso to Section 73(1) of the Finance Act, 1994 along with interest in terms of the provisions of Section 75 of the Finance Act, 1994. In view of the above factual position, the case law relied upon by the assessee are clearly distinguishable and they do not come to the rescue of the assessee. However, the payment of Rs. 1,51,15,378/- made by the assessee is appropriated against the demand of Rs. 6,69,05,723/-.

24. In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfill their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on

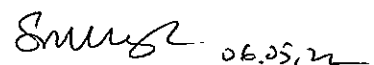
the service provider and private records maintained by them for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider. In the instant case the assessee has not complied with the provisions of Service Tax. They have received amount from customers but did not disclose the same before department nor paid service tax thereon and these facts came to the knowledge of the Department only when the enquiry was initiated by Department. This act of the said assessee is tantamount to willful misstatement and suppressing the facts with an intention to evade service tax payment. The assessee is also liable for penal action as per Section 78 of the Finance Act, 1994 for making willful misstatement and suppression of facts from the department, with an intention to evade service tax payment.

25. I also find that the assessee had rendered themselves liable to penalty in terms of the provisions of Section 77(1)(c) of the Finance Act, 1994 in as much as they failed to produce the documents called for and appear before the investigating officer in response to the summons. Moreover, the assessee have rendered themselves liable to penalty under Sec. 77(2) of the Finance Act, 1994 in as much as they failed to file the periodical ST-3 returns for the period from 2014-15 to 2016-17.

26. In view of the above discussions and findings, I pass the following order.

ORDER

- (i) I confirm the demand of Service tax to the tune of Rs. 6,69,05,723/- (Rs. Six crore sixty nine lakh five thousand seven hundred twenty three only), under proviso to Sub-Section (1) of Section 73 by invoking extended period of five years and order for its recovery. I order to appropriate Rs. 1,51,15,378/- (Rupees one crore fifty one lakh fifteen thousand three hundred seventy eight only) paid under SVLDRS 2019 towards the said liability.
- (ii) I order to charge and recover 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) I impose penalty of Rs.10,000/- (Rupees ten thousand only) under Section 77(2) of the Finance Act, 1994;
- (iv) I impose penalty of Rs.10,000/- (Rupees ten thousand only) under 77(1)(c) of the Finance Act, 1994;
- (v) I Impose penalty of Rs. 6,69,05,723/- (Rs. Six crore sixty nine lakh five thousand seven hundred twenty three only) under Section 78 of the Finance Act, 1994 for the above mentioned contraventions. 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 said period of thirty days.



(SUNIL KUMAR SINGH)
Principal Commissioner
Central Goods & Service Tax
Ahmedabad - South

To,
M/s. Brittman India Private Limited,
5670, Raja Complex, Ground Floor,
Vijay Cross Road, Navrangpura, Ahmedabad-380009

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Asstt. Commissioner, Central Tax, Division-VI, Ahmedabad South.
3. The Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
4. The Asstt. Commissioner (Prosecution), HQ, Ahmedabad South.
5. The Superintendent, Central Tax AR-II, Div.-VI, Ahmedabad South
6. ✓ The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
7. Guard file.