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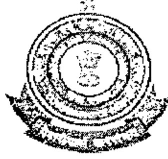

OFFICE OF THE PRINCIPAL COMMISSIONER OF C. G. S. T., AHMEDABAD SOUTH

प्रधान आयुक्त का कार्यालय, के. व. से. क., अहमदाबाद दक्षिण

G. S. T. BHAVAN, AMBAWADI, AHMEDABAD – 380 015

व. से. क. भवन, आम्बावाड़ी, अहमदाबाद - ३८० ०१५

फा.सं.F.No. STC/4-25/Genesis Learning/OA-I/18-19
DIN no. 20200164WS00003S86DD

<u>आदेश की तारीख</u>: Date of Order : 16.01.2020
<u>जारी करने की तारीख</u>: Date of Issue : 16.01.2020

द्वारा पारित / Passed by: Shri Mohit Agrawal, ADDITIONAL COMMISSIONER

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मूल आदेश सं./Order-In-Original No.17-18/Cx-I/Ahmd/ADC/MA/2019

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

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

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

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

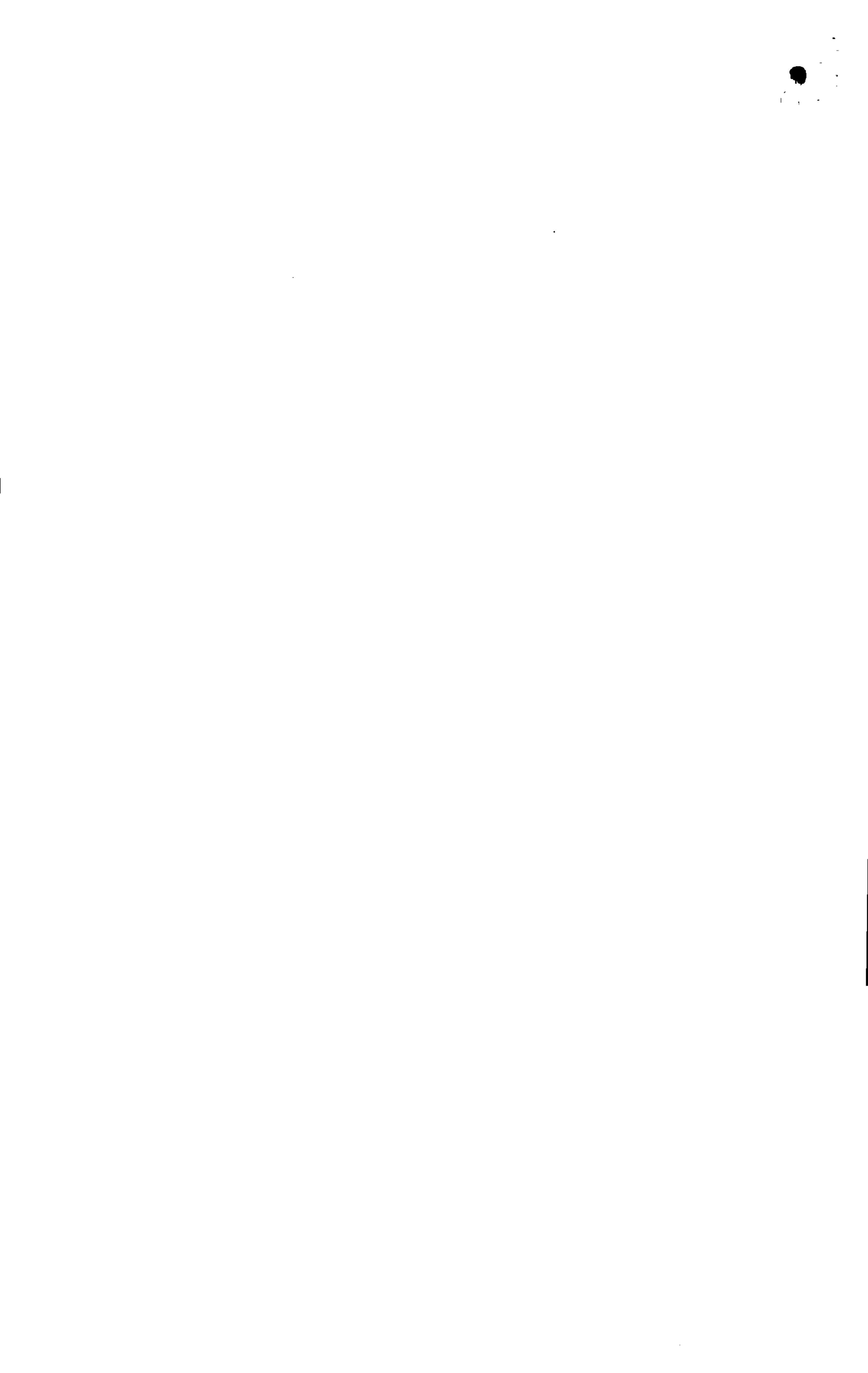
उक्त अपील दो प्रतियों में प्रारुप सं. इ.ए.-1 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क(अपील) नियमावली, 2001 के नियम3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जानेचाहिए। इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. E.A.-1 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.

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

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

<u>संदर्भ/Reference</u> :कारणबताओसूचना फा.सं.File no. STC/4-25/Genesis Learning/OA-I/18-19 dated 20/08/2018 and vide File no. STC/4-108/GENESIS/O&A/18-19 dated 27/03/2019 issued to M/s. Genesis Learning Initiatives Pvt. Ltd., 8, Akashneem, opp. Nehru Foundation, Bodakdev, Ahmedabad – 3800054



Brief Facts of the Case

1. Whereas CERA Audit has observed vide Half Margin Memo no. CERA-I/SSCA-CTCC/AR-II/DN-II/HM-35 dated 07.03.2017 that during verification of data collected from Registrar of Company, Ahmedabad, it was revealed that M/s. Genesis Learning Initiatives Pvt. Ltd., provided services and collected Rs. **13,59,90,927/-** during 2013-14 to 2015-16 and the said service provider was not registered with the department. The CERA Audit further observed that the said service provider was not eligible to avail benefit of SSI exemption limit of 10 Lakhs under Notification No. 33/2012-ST since it has provided the services valued more than Rs.10 Lakhs in the preceding financial year of 2012-13 and it has resulted in non payment of service tax of Rs. **1,77,46,620/-** besides non-compliance of other provisions of the Service Tax Laws by the service provider.

2. Whereas **M/s. Genesis Learning Initiatives Pvt. Ltd., Ahmedabad** (hereinafter referred to as "the said service provider") with registered address at **8, Akashneem, opp. Nehru Foundation, Bodakdev, Ahmedabad – 3800054,** with CIN no. **U80903GJ2009PTC057866** and PAN no. **AADCG6832C** were not found to be registered with the Service tax department. The Department wrote to the said service provider vide letter from F. No. STC/Misc/Div-VI/AR-II./17-18 dated 29.08.2017 asking as to whether they were registered with Service Tax Department and whether they have discharged their service tax liabilities during the period from 2013-14 to 2015-16. However the said service provider disclosed nothing in respect of service tax registration and about discharging their service tax liabilities but only replied vide their letter dated 11.09.2017 stating that M/s. Genesis Learning Initiatives Pvt. Ltd., Ahmedabad is engaged in the business of IT Outsourcing Services (BPO- Business Process Outsourcing) and is a 100% EOU (Export Oriented Unit), hence prior to GST, they are not liable to pay any service tax since 100% of their revenue was from service exports.

3. Whereas it was further observed thatthe details of non payment of service tax and value of services provided by themfor the year 2013-14, 2014-15, 2015-16, are as under:-

Sr.	Year	Value of Services Provided (Rs.)	Rate of ST (incl. cess)	Amount of ST(incl. cess) Levible (Rs.)
1	2013-14	4,48,19,007/-	12.36%	55,39,629/-
2.	2014-15	4,69,27,019/-	14.50%	58,00,180/-
3.	2015-16	4,41,84,901/-	14.50%	64,06,811/-
	Total	**13,59,90,927/-**		**1,77,46,620/-**

4 As per section 68 (1) read with section 66BA of the Finance Act, 1994 as amended, 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.

5. As per section 69 (1) of the Act, Every person liable to pay the service tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.

6. As per section 69 (2) of the Act 1994, any service provider, whose aggregate value of taxable service in a financial year exceed Rs. 9 lakh is required to take Registration.

7.Further, according to Notification No. 33/2012-(Service Tax) Central Government has exempted taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994.

8. Therefore, it appears that the said service provider was required to obtain Service Tax Registration and comply the Service Tax laws accordingly.

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

10. According to Section 70 of the Finance Act, 1994 every person liable to pay Service Tax is required to himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all materials facts in ST-3 returns.

11. Whereas the said service provider has not disclosed full, true and correct information about the value of the service provided by them, and thus, it appears that there was a deliberate withholding of essential and material information from the department about service provided and *value* realized by them. It appears that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the *extended* period *in* terms of Section 73(1) of Finance Act, 1994 to demand *the* Service Tax short not paid.

12. As per Section 75 ibid every person, who is liable to pay the tax in accordance with the provisions of Section 68, or rules made there under and fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed,is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty *six* per *cent* per annum, as is 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.

13. In view of the facts discussed in foregoing paras and material evidence available on record, it appears that the said service provider have contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they failed to determine; collect and pay Service Tax amounting to Rs.1,77,46,620/- (including Education cess, S&H Edu. Cess, SBC & KKC) for the period 2013-14 to 2015-16 as detailed above and they have failed to declare value of taxable service to the department and thus suppressed the amount of charges received by them for providing taxable services as detailed above.

14. 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, a 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 him for normal business purposes are accepted, practically for all the purpose of Service Tax. Allthese 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, no matter how innocently. From the evidence, it appears that the said assessee failed to obtain Service Tax Registration and comply with the Service Tax laws accordingly thereby escaping *from* their tax liabilities in utter disregard to the requirements of law and breach of trust deposed on them and such outright act in defiance of law have rendered them liable for penal action as per the provisions of Section 78 of Finance Act, 1994 for suppression or concealment or escaping *from* their service tax liabilitieswith intent to evade payment of service tax.

15. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017 and therefore the provisions of the said repealed/amended Acts and Rules made there under are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

16. Therefore, M/s. Genesis Learning Initiatives Pvt. Ltd., 8 Akashneem, opp.Nehru Foundation,Bodakdev, Ahmedabad-380 054 were called upon vide SCN no. STC/4-25/Genesis Learning/OA-I/18-19 dated **20/08/2018** to show cause to The Additional Commissioner of Central Goods and Service Tax, having office at 6th floor, Central GST Bhawan,Panjrapole, Ambawadi, Ahmedabad as to why:-

(i) Service Tax amounting to Rs. 1,77,46,620/- (One Crore, Seventy Seven Lakhs, Forty Six Thousands, Six Hundreds and Twenty Only) leviable on the taxable service provided by them during the period from 2013-14 to 2015-16 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;

(iii) Penalty should not be imposed under Section 77(1) (a) for failure to take service tax registration as per the provisions of Section 69 of the Finance Act, 1994;

(iv) Penalty should not be imposed under Section 70(1) of the Finance Act, 1994 for non filing of service tax returns, and

(v) Penalty should not be imposed upon them under Section 76(1) and Section 78(1) of the Finance Act, 1994 for contraventions mentioned in foregoing paras.

17. Whereas it was further observed that the said service provider continued the same practice for the subsequent period and details for the further period were called for by the jurisdictional range officer vide letter F. No. AR-II/Div-VI/SCN Genesis/2017-18 dated 06.02.2019. In response to the same, the said service provider submitted the details for the further period 2016-17 and 2017-18 (Upto June-2017), vide their letter dated 26.02.2019. From the details submitted by the said assessee vide letter dated 26.02.2019, it was observed that they have continued to follow the same practice of not paying the Service Tax on the services providedby them, as detailed as under :-

Sr.	Year	Value of Services Provided (Rs.)	Rate of ST (incl. cess)	Amount of ST (incl. cess) Levible (Rs.)
1	2016-17	4,24,72,328/-	15 %	63,70,849/-
2.	2017-18	97,69,633/-	15 %	14,65,445/-
	Total	**5,22,41,961/-**		**78,36,294/-**

18. Therefore, the said service provider, M/s. Genesis Learning Initiatives Pvt. Ltd., 8, Akashneem, Opp. Nehru Foundation, Bodakdev, Ahmedabad-380054, were further called upon vide SCN no. STC/4-108/GENESIS/O&A/18-19 dated **27/03/2019** to show cause, in terms of Section 73(1A) of the Finance Act, 1994, to The Additional Commissioner of Central Goods and Service Tax, having office at 6th floor, Central GST Bhawan, Panjrapole, Ambawadi, Ahmedabad - 380015 as to why:

(i) The value of Rs. 5,22,41,961/- should not be considered as taxable value of the services provided, during the period from April, 2016 to June, 2017, by them to their clients under the provisions of the Finance Act, 1994;

(ii) The service tax (inclusive of Cess), amounting to Rs.78,36,294/- (Rupees Seventy Eight Lakhs, Thirty Six Thousands, Two Hundreds&Ninety Four Only), for the period from April, 2016 to June, 2017, should not be demanded and recovered from them under section 73(1) of the Finance Act,1994;

(iii) Interest as applicable on the amount of service tax liability of Rs. 78,36,294/- should not be recovered from them under section 75 of the Finance Act, 1994 as amended;

(iv) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 as amended for the failure to make the payment of service tax within the prescribed time limit under the law;

(v) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 as amended for the failure to self assess the Service Tax liability;

Defense Submission and Personal Hearing

19. The said service provider replied to the first SCN dated 20.08.2018, vide their letter dated 16.10.2018 and to the second SCN dated 27.03.2019, vide their letter dated 01.04.2019 and inter-alia submitted that these proceedings are unwarranted and uncalled for because the information that M/s Genesis learning Initiatives Pvt. Ltd. is engaged in providing Commercial Training or Coaching Service, is completely misplaced and wrong; that they are engaged in the business of providing IT enabled and BPO (Business Process Outsourcing) services for exports in the area of**medical transcription**; that medical transcription is a process where they work with health and medical records of patients treated in hospitals in the United States of America (USA); that they are a 100% export oriented unit (EOU) with an office setup in Software Technology Parks of India (STPI), Bhilai, Chhatisgarh; that they have been issued a Letter of Permission (LOP) for setting up this 100% EOU by STPI, Bhilai on 11/11/2010 for a period of 5 years, further renewed on 19/01/2016 for an additional period of 5 years until 10/11/2020; and that they have been regularly filing their monthly Softex (Software Export) forms returns with STPI Bhilai; that these records clearly state the details of services (medical transcription) that they provide and the billing that they charge their client each month in US$ terms; and that they have never been involved in the business of coaching, commercial training or any kind of education services.

20. The said service provider further submitted that they have been registered under the GST Act since July 2017 with GSTIN registration number being 24AADCG6832C1ZZ and have been filing all the relevant periodic returns; that they fulfill all the criteria which exempt services exported from service tax based on Rule 6A of the Service Tax Rules, 1994; that the provider of service is **located in the taxable territory**; that the recipient of service is **located outside India,** as their clients during this time period have their registered address, outside India; that their service i.e. IT enabled service is not a service specified in the **Negative List** of section 66D of the Act; that the **place of provision of the service is outside India**; that Rule 3 of the Place of Provision of Services Rules, 2012 is applicable in their case, which prescribes that the place of provision of a service shall generally be the location of the recipient of the service; that the recipient of service is located outside India and hence out of taxable territory; that the payment of such service has been received by them in convertible foreign exchange of the United States Dollar (USD); that they alsofulfill the criteria that the the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act; that it is their bona-fide belief that they are not liable to pay service tax on their service exports; that they have disclosed true and correct information about their business and their stand about the non-applicability of service tax in all their communication with the Department; that it is apparent that there was no deliberate withholding or concealment of essential information, hence extended period in terms of Section 73(1) is not at all applicable; that they were not required to take Service Tax registration and were not liable to pay service tax on their service exports and hence there was no case of evasion of tax; that hence they are neither liable for any penal action nor any Service tax, interest or

penalty be applicable, as stated in the SCN; that they trust that the above details and explanation satisfies the queries raised and that they have shown sufficient cause for this case to be satisfactorily closed; that there is no justification in the show cause notice and the proposals levelled therein, and therefore, they request to withdraw this show cause notice in the interest of justice.

21.1 The matter was posted for personal hearing and Shri Swapnil Satish Nadkar, Director of the said service provider unit appeared on 24.10.2019 for personal hearing and re-iterated their earlier submissions dated 16.10.2018 and 01.04.2019.He also submitted copies of following documents:-

1. LOP from STPI;
2. Monthly Software export (SOFTEX) forms filed with STPI;
3. Foreign Inward Remittance Certificate (FIRC) from bank;
4. Duty Credit Scrips received from DGFT under SEIS (Services Exports from India Scheme);
5. Extract from company returns mentioning principal activity of company;
6. Copy of client contracts;
7. Copy of IEC (Import Export Code); and
8. RCMC of SEPC.

21.2 The matter was finally heard on 26.12.2019, when Shri Swapnil Satish Nadkar, Director of the said service provider unit submitted that their services do not fall under OIDAR [Online Information and Database Access and/or Retrieval] services since it is not automated and requires extensive human involvement and as a matter of record, they provide medical transcription services. He further requested to grant 10 days time to make addititional submission in this regard. He also submitted monthwise figures of sales ledger for the financial year, 2016-17, as under:-

Month	INR Remittance Amount (Rs)	Bank Charges (Rs)	Total Revenue based on invoice (Rs)
Apr-16	35,54,436	572	35,55,008
May-16	36,85,886	578	36,86,464
Jun-16	36,86,161	581	36,86,742
Jul-16	34,97,347	570	34,97,917
Aug-16	36,27,458	533	36,27,991
Sep-16	36,47,994	554	36,48,548
Oct-16	34,68,131	561	34,68,692
Nov-16	34,79,612	538	34,80,150
Dec-16	34,14,340	557	34,14,897
Jan-17	34,53,679	544	34,54,223
Feb-17	32,22,375	0	32,22,375
Mar-17	37,29,321	0	37,29,321
TOTAL	**4,24,66,740**	**5,528**	**4,24,72,328**

21.3 The said service provider submitted their additional submission vide letter dated 01.01.2020 and inter-alia submitted that the proposal raised in the show cause notice is without any merit in law as well as in the facts of the case and the same is therefore, required to be withdrawn; that the services rendered by them are not taxable services inasmuch as the same have not been rendered within the taxable territory of India and therefore, in terms of Section 66B, there could be no levy of service tax on the said services; that this fact has not been disputed in the show cause notice and therefore, they emphatically deny all the allegations levelled against them in this show cause notice; that the proposal levelled against them in the show cause notice deserves to be vacated because, as aforesaid, they are unsustainable in facts as well as in law; that they are a 100% export-oriented unit (EOU) engaged in the business of

providing medical transcription services and have been exclusively engaged by Nuance Communication, USA for the said purpose; that the doctors, surgeons and other healthcare providers situated in USA come in contact with Nuance Communication, USA for converting audio recordings into transcribed notes for each patient for the purpose of completing the medical records; that Nuance Communication, USA, then in turn sends the said audio recordings to them, which is then scripted down in prescribed formats by their employees and sent back to Nuance Communication, USA; that for the services rendered, all payments are received by them in convertible foreign exchange currency; that they clarify that for the last 8-9 years, they have been exclusively working with Nuance Communications, USA and all their services have been rendered to the said client which is situated abroad; and that as the services rendered by them were exclusively consumed by a foreign recipient, no service tax was payable thereon in terms of Section 66B of the Act and it is for the said reason, they did not apply for any service tax registration and no service tax was ever charged or collected by them from the said client.

21.4 The said service provider further submitted that the department collected some data from the Registrar of Company and presumed that they were engaged in providing Commercial Training or Coaching Services; that in line with the said misunderstanding, they were communicated a letter dated 29.08.2017 calling upon them to pay service tax plus interest for the alleged taxable services rendered by them under the aforesaid head; that after receiving the said letter, they submitted their response vide letter dated 11.09.2017 and informed the department that they were engaged in providing medical transcription services and no service tax was payable thereon; that despite such factual clarification, the department has now vide subject show cause notice proposed to recover service tax to the tune of Rs. 1,77,46,620/- along with interest and penalty on the complete misunderstanding that they are engaged in providing taxable services in the nature of Commercial Training or Coaching Service; that the department has completely erred in presuming that they provide any training or coaching services; that they are exclusively engaged in providing medical transcription services to foreign client; that the services provided by them are in the nature of Medical Transcription services which is a process where the case history of a patient as recorded by the medical professional in audio format is transcribed in prescribed formats and sent back to the foreign service recipient; that hence, the ingredient of imparting training to anyone is clearly missing in this case as our service is of providing the transcribed copies to the medical professionals who are already skilled and well versed with their job and there is evidently, no coaching or training involved to justify the allegations made in the notice; that in the present case, the medical transcription services are provided by them to Nuance Communication, USA, copies of the agreement between them and Nuance Communication are already supplied along with the earlier replies filed in this notice; that this being the fact and situation, it would be relevant to take note of certain provisions of Place of Provision of Service Rules, 2012; that Rule 3 to the said rules provides that the place of provision of a service shall be the location of the recipient of service; that Proviso to the said rule further provides that in case the location of the service receiver is not available in the ordinary course of business the place of provision shall be the location of the provider of service; that in the present case, indisputably, the location of the service recipient is known and hence, the proviso to the said Rule would not come into the picture; that as per Rule 3 of the said Rules, the provision of service in the present case would be the location of the service recipient i.e., beyond the taxable territory of India; and that this being the fact and situ cannot be termed as taxable service to invite any levy of service tax thereon.

21.5 The said service provider also submitted that during the course of personal hearing, it was elaborately explained by them that services rendered by them were not taxable services inasmuch as the same were rendered in a foreign territory; that in support of the said explanation, Rule 3 of the said Rules was also cited to show that even as per the Place of Provision of Service Rules, 2012, the location of the services rendered by them is deemed to be the location of the service recipient i.e., beyond the taxable territory of India; that in response to the same, it was put to them that their services may be covered under the category of 'OIDAR Services' and consequently, in terms of Rule 9 of the said Rules, the place of provision of service would be the

location of the service provider; that in response to the same, they say and submit that Rule 9 would have no application in the facts of the present case as the services rendered by them can never be categorized under 'OIDAR Services' or any of the other services mentioned therein; that Rule 2 (l) to the said rules define 'OIDAR Services' to mean providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network; that it would be pertinent to note that prior to introduction of the 2012 regime under the Finance Act, 'OIDAR Services' was included as one of the taxable services and was defined identically under Section 65 (75) of the Finance Act; that the Central Government vide Notification No. 8/2003 issued on 20.06.2003 had exempted the services in the nature of medical transcription services; that to clarify the scope and effect of the said exemption, the Board vide Circular No. 59/2003 dated 20.06.2003 had clarified that services in the nature of medical transcription services otherwise falling under the category of 'Business Auxiliary Services' would be exempt from payment of service tax; that now, it is an undisputed fact that in and around the year 2003 both the category of "Business Auxiliary Services" and "OIDAR Services" were in the statute book and were considered as taxable services; that despite the existence of the 'OIDAR Services' in the statute book, the Central Government and the Board had clarified that the services of medical transcription services were being exempted from its levy under the category of Business Auxiliary Services; that this clearly shows that the medical transcription services can never be considered as 'OIDAR Services' so as to attract implication of Rule 9 of the Place of Provision of Service Rules; that thus, there is clear fallacy in the suggestion made during the course of hearing and that they emphasize that services rendered by them are not in the nature of 'OIDAR Services' and in terms of Rule 3 of the said Rules read with Section 66B of the Act, the services are not in the nature of taxable services warranting any levy of service tax.

21.6 The said service provider further also submitted that without prejudice to aforesaid submissions regarding inapplicability of OIDAR Services, they further say and submit that the adjudicating authority has no jurisdiction to travel beyond the scope of show cause notice; that it is an admitted fact that the show cause notice calls upon them to show cause as to why the services in question cannot be categorized under 'Commercial Training or Coaching Service' and service tax be levied on the said basis; that in response to the same, we have elaborately explained the nature of services carried out by us and have duly explained that the same is not eligible to service tax inasmuch as the entire service has been rendered to foreign party, therefore, at this stage, to suggest that the services may be classifiable under a different heading so as to warrant different implication under the Export of Service Rules is clearly unjust and unfair and also beyond the very scope of the show cause notice; that it is a settled legal position that a show cause notice is the very foundation on which the case is initiated by the department; that the Hon'ble Courts and Tribunals have therefore, time and again stressed that proceeding so initiated cannot go beyond the proposals raised in the show cause notice; that reference in this regard, may be made to the judgment of Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise and Customs, Belgaum vs Mahakoshal Beverages Pvt. Ltd. **[2014 (33) STR 616 (Kar.)]**,wherein the Hon'ble High Court has held that there was no proposal in the show cause notice to include the income as business auxiliary service and therefore in the absence of such charge in the notice, imposition of tax and consequent interest and penalty cannot be sustained in the eyes of law; that reference may also be made to the judgement of Hon'ble High Court of Gujarat in the case of Commissioner vs Reliance Ports and Terminals Ltd. **[2016 (334) ELT 630 (Guj.)]**,wherein the Hon'ble High Court has held that the show cause notice is the foundation of the demand and that the order-in-original and the subsequent orders passed by the appellate authorities under the statute should be confined to the show cause notice and therefore, the question of examining the validity of the impugned orders on allegations which are beyond the proposal of the show cause notice does not arise; and that therefore, they further say and submit that the suggestion that services may be covered under the category of OIDAR Services so as to attract Rule 9 of the said Rules, is clearly unwarranted and without any authority of law.

21.7 The said service provider further also submitted that at this stage, they may also address on the issue of limitation inasmuch as the demand raised in the show cause notice is clearly time barred; that there is no allegation much less any evidence on record of the case to suggest any contravention, suppression or misstatement on their part with an intention to evade payment of duty; that in such circumstance, the benefit of extended period of limitation would also not be available to the department; that when there is no justification in demand of duty, no penalty could be lawfully or justifiably imposed on them; that they have not done anything, nor have they omitted to do anything, which act or omission can be termed as an intentional attempt to evade payment of tax, and therefore there is no justification in proposal to impose penalty also; that they are also not guilty of making any misstatement much less any wilful misstatement as alleged in the show cause notice; that their stand regarding the nature of supplies has remained the same in the earlier tax regime as also the present tax regime and has been even otherwise in consonance with the underlying intention of the government; that the matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messrs **Hindustan Steel Limited [1978 (2) ELT (J159)(SC)],**wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so; that the Apex Court has further held that only in cases where it was proved that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with a knowledge that he was required to act otherwise, penalty might be imposed; that it is held by the Hon'ble Supreme Court that in other cases, where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified; that thus, proposal of imposing penalty on them is bad and illegal and hence, it deserves to be withdrawn at once; that interest liability would arise only when any duty was liable to be paid as determined under the said Act, and therefore proposal for demanding and recovering interest is also not applicable in the present case; that in the above premises, they request to withdraw this show cause notice as demand of alleged short paid duty and further proposals for interest and penalty are unsustainable.

Discussion and Findings

22. I have carefully gone through the Show Cause Notices, the relevant relied upon documents and the defense submissions made by the said service provider as well as the submissions made by Shri Swapnil Satish Nadkar, Director of the said service provider unit at the time of personal hearing and the addititional submissionssubsequently madeby them in this regard.I find that the issue for consideration before me now is thatwhether the said service provider has evaded service tax on the services provided by them and have failed to comply with other legal formalities.

23. The main contention of the said service provider is that the services have been exported hence not liable for payment of service tax and for other legal formalities.For the purpose of deciding whether the provision of the services by the said service provider would be considered as export of service, it is of vital importance to discuss the related legal provision.Relevant portion of sub-rule (1) of Rule 6A of Service Tax Rules, 1994, reads as under:

> *"RULE 6A. Export of services.-*
> *(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-*
> *(a) the provider of service is located in the taxable territory,*
> *(b) the recipient of service is located outside India,*
> *(c) the service is not a service specified in the section 66D of the Act,*
> *(d) the place of provision of the service is outside India,*
> *(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and*
> *(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act."*

24. Going through the above provision, it comes forth that to qualify as export of service, the provision of service has to undergo all the following conditions:-

1. The provider of service is located in the taxable territory;
2. The Recipient of service is located outside India;
3. The service is not specified in Negative List;
4. The place of provision of the service outside India;
5. The payment of such service has been received by the provider of service in convertible foreign exchange; and
6. The provider of service and recipient of service are not merely establishments of a distinct person.

25.1 The above provision envisages that to qualify as export of service, the provision of service has to undergo all the above shown six conditions, one of them being place of provision of service OUTSIDE INDIA. As per Place of Provision of Services Rules, 2012, the place of provision of service is to be ascertained under Rule 3 to 12 of the Place of Provision of Services Rules, 2012, depending upon the nature and type of service being provided.

25.2 In order to understand the true nature or type and scope of the said services, I have gone through all the material documents available on record.As per the submission of the assessee, the said service provider has provided services of IT enabled medical transcription, where they work with health and medical records of patients treated in hospitals in the United States of America.

25.3 I have also gone through the copy of one of the **client contracts**submitted by the said service provider, which relates to 'Master Transcription Agreement' between the said service provider and the service recipient M/s. Nuance Communications Ireland Limited, signed on 10.01.2016. At sub-clauses (i) of clause b. of para2 of the said agreement, it is mentioned that the service provider shall perform the services*at one or more locations in India.* At para 1 of the same agreement, it is mentioned that '**Services**' means medical transcription and medical speech editing services. At sub-clauses (ii) of clause b. of para 2 of the said agreement, the scope of the said services have been elaborated and it is mentioned that the service provider shall access voice files and related draft texts (if any) and **supply completed medical reports and other informations to the customers (of the service receiver)** solely **through the applicable platform.**At para 1 of the same agreement, it is mentioned that'**Medical Report**' means an *electronic report* (i) dictated by a Customer, (ii) completely transcribed or edited by service provider, and (iii) made available for delivery through the Platform, and '**Platform**' means the Nuance hosted hardware and software technology accessed by the provider as specified on the statement of work. It is also mentioned there that'**Draft Text**' means text created from Voice Files by Nuance speech recognition software and delivered to provider for medical speech editing and '**Voice Files**' shall mean electronic copies of voice dictation.At sub-clauses (iv) of clause b. of para 2 of the said agreement, it is mentioned that the service provider shall acquire and maintain adequate facilities, required to perform the services, including without limitation, *computer hardware and software,* uninterruptible power supplies, *dedicated internet access* and other telecommunications facilities reasonably required to *connect to the applicable Platform.*

25.4 On the basis of the above, the clear picture of the nature or type and scope of the said services provided by the said service provider, can be drawn as under:

1. The said service provider supplied *data or information* in the form of completed medical reports etc.

2. The said completed medical reports' were*electronic report,* made available by the said service provider for delivery,

3. The delivery of the above said medical reports was made through *a computer network*referred as platform and defined as the Nuance hosted hardware and software technology accessed by the provider.

26. In view of the above discussion, I come to the conclusion that the said service provider, provided data or information, in the name of **medical reports**etc., in electronic form through a computer network. Therefore these services appear to be akin to 'Online information and database access or retrieval services' as defined in clause (l) of Rule 2 of Place of Provision of Services Rules, 2012. Claus : (l) of Rule 2 of Place of Provision of Services Rules, 2012, as prevailed during the period upto 30.11.2016, reads as under:

> *(l) "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;*

Clause (l) of Rule 2 of Place of Provision of Services Rules, 2012, as substituted vide *Notification 46/2016-Service Tax* dated 09.11.2016, with effect from 01.12.2016,reads as under:

> *(l) "online information and database access or retrieval services" has the same meaning as assigned to it in clause (ccd) of sub-rule 1 of rule 2 of the Service Tax Rules, 1994"*

Clause (ccd) of sub-rule (1) of Rule 2 of the Serivce Tax Rules, 1994, as inserted vide *Notification 48/2016-Service Tax* dated 09.11.2016, with effect from 01.12.2016,reads as under:

> *(ccd) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,- (i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet; (iv)* ***providing data or information, retrievable or otherwise, to any person, in electronic form thro.igh a computer network;*** *(v) online supplies of digital content (movies, television shows, music, etc.); (vi) digital data storage; and (vii) online gaming;*

27.1 In view of the above discussion, I come to the conclusion that the subject services involve all the essential ingredients of *online information and database access or retrieval services,* namely (a) providing data or information;(b) in electronic form; and (c) through a computer network.Therefore I hold that the services provided by the said service provider are nothing but 'Online information and database access or retrieval services'. The said service provider has submitted, vide their letter dated 01.01.2020, that the Central Government vide Notification No. 8/2003 issued on 20.06.2003 had exempted the services in the nature of medical transcription services and to clarify the scope and effect of the said exemption, the Board vide Circularthe Board vide Circular No. 59/2003 dated 20.06.2003 had clarified that services in the nature of medical transcription services otherwise falling under the category of 'Business Auxiliary Services' would be exempt from payment of service tax and thus, there is clear fallacy in the suggestion made during the course of hearing and that they emphasize that services rendered by them are not in the nature of 'OIDAR Services' and in terms of Rule 3 of the said Rules read with Section 66B of the Act, the services are not in the nature of taxable services warranting any levy of service tax. The arguments put forth by the said service provider are not tenable as far as firstly, the said exemption notification no. 08/2003 dated 20.06.2003 is no more effective at the relevant period and secondly, the subject circular pertain to the period, prior to the **'negative list'**based regime. Moreover, the services provided by the said service provider, as clearly elaborated and clarified in the Client Contracts have all the essential ingredients of OIDAR services. The said service provider not only transcribed the medical history, treatment, medical

observations and the like but also supplied the *data or information* in the form of completed medical reports (i.e. *electronic reports),* through *a computer network* knownas platform and described in client contract as the Nuance hosted hardware and software technology accessed by the provider. Therefore the services provided by the said service provider is not only limited to medical transcription but also supplying the transcribed medical reports in electronic form through computer network, which are covered under OIDAR services.

27.2 I further find that the services namely 'Online information and database access or retrieval services'have been specified in clause (b) of Rule 9 of Place of Provision of Services Rules, 2012, as prevailed during the period upto 30.11.2016, till clause (b) was omitted vide*Notification 46/2016-Service Tax* dated 09.11.2016, with effect from 01.12.2016. Relevant portion of Rule 9of Place of Provision of Services Rules, 2012, during the period, upto 30.11.2016, reads as under:

> ***RULE 9. Place of provision of specified services.-*** *The place of provision of following services shall be the location of the service provider:-*
>
> *(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;*
>
> *(b)* ***Online information and database access or retrieval services;***
>
> *(c) Intermediary services;*

27.3 I find that the Place of Provision of Services Rules, 2012, have been amended with effect from 01.12.2016, vide notification no. 46/2016-ST dated 09.11.2016, so as to omit clause (b) of Rule 9 of Place of Provision of Services Rules, 2012. As a result, the services namely, **'Online information and database access or retrieval services'** remain no more specified in Rule 9 of Place of Provision of Services Rules, 2012. In such a situation, the place of provision of such service shall be ascertained under Rule 3 of the Place of Provision of Services Rules, 2012. Relevant portion of Rule 3 of Place of Provision of Services Rules, 2012, during the period, with effect from 01.12.2016, reads as under:

> ***RULE 3. Place of provision generally.-***
>
> *The place of provision of a service shall be the location of the recipient of service:*
>
> *Provided that in case of services other than online information and database access or retrieval services where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.*

27.4 I find that the services provided by the said service provider are **'Online information and database access or retrieval services'**. These services remained specified in clause (b) of Rule 9 of Place of Provision of Services Rules, 2012, as prevailed during the period upto 30.11.2016, till clause (b) was omitted vide*Notification 46/2016-Service Tax* dated 09.11.2016, with effect from 01.12.2016.I find that Place of provision in respect of services specified in Rule 9 of Place of Provision of Services Rules, 2012, shall be the **location of the service provider.** For the period with effect from 01.12.2016, the services namely, **'Online information and database access or retrieval services'** remain no more specified in Rule 9 of Place of Provision of Services Rules, 2012 and the place of provision of such service shall be ascertained under Rule 3 of the Place of Provision of Services Rules, 2012 and the Place of provision under Rule 3 of Place of Provision of Services Rules, 2012, shall be the **location of the recipient of service.**I find that the said service provider is a private limited company, registered at Ahmedabad, in India, with an office setup in Software Technology Parks of India (STPI), Bhilai, Chhatisgarh, in India. Therefore the location of the service provider is in India and hence place of provision of service in the instant case shall be in India and NOT outside India, for the period till 30.11.2016. However, due to reason of above discussed amendment of Rules, with effect from 01.12.2016,

the place of provision of service in the instant case shall be the **location of the recipient of service,** for the period from 01.12.2016. The recipient of services in the instant case is located outside India, hence place of provision of such service is ascertained to be OUTSIDE India, for the period from 01.12.2016. The said service provider has submitted, vide their letter dated 01.01.2020, that Rule 9 would have no application in the facts of the present case as the services rendered by them can never be categorized under 'OIDAR Services' or any of the other services mentioned therein. The arguments put forth by the said service provider are not tenable as far as already discussed hereinabove, the services provided by the said service provider, as clearly elaborated and clarified in the Client Contracts have all the essential ingredients of OIDAR services.

28. In view of the above discussion, I find that the provision of service in the instant case fails to be qualified as 'export of service' as far as it fails to satisfy the condition as mentioned in clause (d) of sub-rule (1) of Rule 6A of the Service Tax Rules, 1994, for the period upto 30.11.2016. For the period with effect from 01.12.2016, I find that the place of provision of the services provided by the said service provider shall be ascertained under Rule 3 of the Place of Provision of Services Rules, 2012, as the location of recipient of service. The recipient of services in the instant case is located outside India, hence place of provision of such service is ascertained to be OUTSIDE India. Thus it satisfies the condition as mentioned in clause (d) of sub-rule (1) of Rule 6A of the Service Tax Rules, 1994, for the period from 01.12.2016 to 30.06.2017.

29. In view of the above discussion, I come to the conclusion thatduring the period from April, 2013 to 30.11.2016, the services in question have been provided in taxable territory and are not specified in negative list.Therefore, every ingredient exists to hold the said services as taxable services, for the period upto 30.11.2016.The submission, made by the said service provider that that they have fulfilled all the criteria for export of services under Rule 6A of the Service Tax Rules, 1994, is not tenable in view of the facts discussed hereinabove.Mere fact, that the said service provider is a 100% export oriented unit (EOU) with an office setup in STPI, is not sufficient to prove that the above said provision of service qualify to be 'export of service', unless it meets all the requirements as mentioned in Rule 6A of the Service Tax Rules, 1994.However, for the period from 01.12.2016, due to change in related legal provision, the services in question, will not attract the same treatment. I find that the place of provision of services namely, **'Online information and database access or retrieval services'** provided by the said service provider during the period from 01.12.2016 to 30.06.2017, is ascertained to be OUTSIDE India. Thus it satisfies the condition as mentioned in clause (d) of sub-rule (1) of Rule 6A of the Service Tax Rules, 1994, for the period from 01.12.2016 to 30.06.2017 and merit to be treated as export of services. Therefore I hold that the said services provided during the period from 01.12.2016 to 30.06.2017, are not taxable.

30.Every person providing taxable service has to pay service tax as per section 68 (1) read with section 66BA of the Finance Act, 1994, at the rate specified in section 66B, by due date as provided under Rule 6 of Service Tax Rule 1994. Every person liable to pay the service tax shall apply for registration under Section 69 of the Finance Act, 1994. Therefore, the said service provider was required to apply for Service Tax Registration and comply the Service Tax laws accordingly. The said service provider was also required to pay service tax by due date as provided under Rule 6 of Service Tax Rules, 1994. The said service provider was further required to himself assess the tax due on the services provided by him and thereafter furnish a return by disclosing wholly & truly all the material facts in ST-3 returns, as provided in Section 70 of the Finance Act, 1994.

31.1 I find that the said service provider has failed to apply for Service Tax Registration. The said service provider has also failed to pay service tax by due date as provided under Rule 6 of Service Tax Rules, 1994. The said service provider has further failed to himself assess the tax due on the services provided by him and thereafter furnish a return by disclosing wholly and truly all material facts in ST-3 returns, as

provided in Section 70 of the Finance Act, 1994. Thus the said service provider has not disclosed information about the provision of taxable service deliberately withholding the essential and material information from the department about service provided and *value* realized by them. All these material informations had been concealed from the department and thus the said service provider suppressed the facts and evaded the tax. Therefore, in this case all essential ingredients exist to invoke the *extended* period *in* terms of Section 73(1) of Finance Act, 1994 to demand *the* Service Tax short not paid. The said service provider has submitted, vide their letter dated 01.01.2020, that there is no allegation much less any evidence on record of the case to suggest any contravention, suppression or misstatement on their part with an intention to evade payment of duty and in such circumstance, the benefit of extended period of limitation would also not be available to the department. This submission is not tenable in view of the fact that the said service provider has failed to furnish a return by disclosing wholly and truly all material facts in ST-3 returns, as provided in Section 70 of the Finance Act, 1994. Thus the said service provider has not disclosed information about the provision of taxable service deliberately withholding the essential and material information from the department about service provided and *value* realized by them and thus the said service provider suppressed the facts and evaded the tax.

31.2 The said service provider has submitted, vide their letter dated 01.01.2020, that it is an admitted fact that the show cause notice calls upon them to show cause as to why the services in question cannot be categorized under 'Commercial Training or Coaching Service' and service tax be levied on the said basis and that the adjudicating authority has no jurisdiction to travel beyond the scope of show cause notice. This submission is not tenable in view of the fact that in the era of the **'negative list'** based regime, effective from 01.07.2012, service tax is applicable to all services except negative list and there is no specific requirement to categorize the service to hold it taxable, as it existed prior to this regime. Moreover the charging para (para no. 16) in the SCN dated 20.08.2018, no where proposes to categorize the service under Commercial Training or Coaching Service, but it proposes that Service Tax, leviable on the taxable service provided by them, be demanded and recovered under proviso to Sub-Section (1) of Section 73 by invoking extended period of five years.The said service provider has referred to the judgment of Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise and Customs, Belgaum vs Mahakoshal Beverages Pvt. Ltd. [**2014 (33) STR 616 (Kar.)**],wherein the Hon'ble High Court has held that there was no proposal in the show cause notice to include the income as business auxiliary service and therefore in the absence of such charge in the notice, imposition of tax and consequent interest and penalty cannot be sustained in the eyes of law. But I find that this decision pertain to the service tax regime prior to the era of the **'negative list'** based regime, when, there was specific requirement to categorize the service to hold it taxable. The said service provider has also referred to the judgment of Hon'ble High Court of Gujarat in the case of Commissioner vs Reliance Ports and Terminals Ltd. [**2016 (334) ELT 630 (Guj.)**],wherein the Hon'ble High Court has held that the show cause notice is the foundation of the demand and that the order-in-original and the subsequent orders passed by the appellate authorities under the statute should be confined to the show cause notice.But I find that this decision pertain to central excise, so it is not applicable in the instant case.

32. In view of the facts discussed in foregoing paras and material evidence available on record, I hold that the said service provider has contravened the provisions of Section 66B of the Finance Act, 1994, Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as that they have failed to file service tax returns and failed to determine, collect and pay Service Tax amounting to Rs.**1,77,46,620/-**(including Education cess, S&H Edu. Cess, SBC & KKC) for the period 2013-14 to 2015-16. They have further failed to file service tax returns and determine, collect and pay Service Tax amounting to Rs. 42,97,727/-, for the period from April, 2016 to November, 2016, calculated @ 15%, on value of services, amounting to Rs. 2,86,51,512/-.They have also failed to declare value of taxable service to the department and thus

suppressed the amount of charges received by them for providing taxable services as detailed above.

33. I find that the said service provider has submitted that they have disclosed true and correct information about their business and their stand, about the non-applicability of service tax, in all their communication with the Department and that it is apparent that there was no deliberate withholding or concealment of essential information, hence extended period in terms of Section 73(1) is not at all applicable. This submission is not tenable in view of the fact that there is no such communication on record. The first communication by the said service provider with the Department is only in response to the specific query raised by the Department vide Range Officer letter no. STC/Misc/Div-VI/AR-II/17-18 dated 29.08.2017.

34. I find that the said service provider has suppressed the facts, which has resulted in revenue loss to the exchequer. Thus, the extended period of limitation is applicable to the facts of the present case and the arguments of the said service provider are not tenable. They have suppressed the facts and evaded payment of Service Tax rendering them liable for penalty. In view of the above discussion, I find that the extended period of limitation as envisaged in the proviso to Section 73(1) of the Act is correctly invocable in the instant case for recovery of unpaid Service Tax alongwith interest u/s 75 of the Finance Act 1994.

35. 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, a 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 him for normal business purposes are accepted, practically for all the purpose of Service Tax. Allthese 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, no matter how innocently. From the evidence, it appears that the said assessee failed to obtain Service Tax Registration and comply with the Service Tax laws accordingly thereby escaping *from* their tax liabilities in utter disregard to the requirements of law and breach of trust deposed on them and such outright act in defiance of law have rendered them liable for penal action as per the provisions of Section 76 and/or 78 of Finance Act, 1994 for suppression or concealment or escaping *from* their service tax liabilitieswith intent to evade payment of service tax.

36. The said service provided has also contended that that they were not required to take Service Tax registration and were not liable to pay service tax on their service exports and hence there was no case of evasion of tax and that they are neither liable for any penal action nor any Service tax, interest or penalty be applicable. However, the findings, discussed as above, amply demonstrate that the said service provider has suppressed the facts and contravened the provisions of the Finance Act, 1994 and the rules made there under, as specified above and as such the consequences shall automatically follow. The Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008 (231) E.L.T. 3 (S.C.) and further clarified in the case of U.O.I. Vs. R. S. W. M. reported in 2009 (238) E.L.T. 3 (S.C). Hon'ble Supreme Court has said that the presence of malafide intention is not relevant for imposing penalty and *mensrea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. I therefore conclude that the said service provider has rendered themselves liable to penalty in terms of the provisions of Section 78 of the Finance Act, 1994.

37. I find that the said service provider was legally liable to pay the service tax as discussed hereinabove, was also legally bound to apply for registration under Section 69 of the Finance Act, 1994. However, the said service provider has failed to apply for registration under Section 69 of the Finance Act, 1994 and thus rendered themselves liable for penalty under Section 77 of the Finance Act, 1994.

38. I find that the said service provider was further required to himself assess the tax due on the services provided by him and thereafter furnish a return by disclosing wholly & truly all the material facts in ST-3 returns, as provided in Section 70 of the Finance Act, 1994, but failed to do so and rendered themselves liable for penalty/late fees under Section 70 of the Finance Act, 1994, for the period under question, as under:-

Sr. No.	Period of Return	Due Date of filing	Filed on	Penalty/Late fees Payable (Rs.)
1.	April to Sept, 2013	25/10/2013	Not filed	20,000/-
2.	Oct, 2013 to March, 2014	25/04/2014	Not filed	20,000/-
3.	April to Sept, 2014	14/11/2014	Not filed	20,000/-
4.	Oct, 2014 to March, 2015	25/04/2015	Not filed	20,000/-
5.	April to Sep, 2015	25/10/2015	Not filed	20,000/-
6.	Oct, 2015 to March, 2016	29/04/2016	Not filed	20,000/-
7.	April to Sep, 2016	25/10/2016	Not filed	20,000/-
8.	Oct, 2016 to March, 2017	30/04/2017	Not filed	20,000/-
			Total	**1,60,000/-**

39. Therefore I hold that the said service provider is liable to pay service tax amount as quantified hereinabove with due interest. The said service provider is also liable for penalty under Section 70, Section 76, Section 77 and Section 78, for failure to comply with the service tax laws applicable at the material time, as discussed hereinabove. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017 and therefore the provisions of the said repealed/amended Acts and Rules made there under are enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under this notice.

Order

40. In view of the foregoing discussions and findings, I hereby pass the following order:-

(i) Service Tax (including cesses) amounting to Rs. **1,77,46,620/-** *(One Crore Seventy Seven Lakh Forty Six Thousand Six Hundred and Twenty Only)* leviable on the taxable service provided by them during the period from 2013-14 to 2015-16, as demanded vide SCN no. STC/4-25/Genesis Learning/OA-I/18-19 dated **20/08/2018,** is hereby confirmed and ordered to be recovered from them under provisio to Section 73(1) of Finance Act, 1994;

(ii) Service Tax (including cesses) amounting to Rs. **42,97,727/-** *(Rupees Forty Two Lakh Ninety Seven Thousand Seven Hundred & Twenty Seven Only).* leviable on the taxable service provided by them during the period from April, 2016 to November, 2016, as demanded vide SCN no. STC/4-108/GENESIS/O&A/18-19 dated **27/03/2019,** is hereby confirmed and ordered to be recovered from them under Section 73 of Finance Act, 1994;

(iii) Service Tax (including cesses) amounting to Rs. **35,38,567/-** *(Rupees Thirty Five Lakh Thirty Eight Thousand Five Hundred & Sixty Seven Only),* pertaining to the period from December, 2016 to June, 2017, as demanded vide SCN no. STC/4-108/GENESIS/O&A/18-19 dated **27/03/2019,** is hereby dropped;

(iv) Interest as applicable on the amount of service tax liability as confirmed above at para (i) and (ii) is ordered to be recovered from them under section 75 of the Finance Act, 1994 as amended;

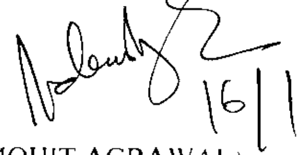
(v) Penalty amounting to Rs. **10,000/-** is hereby imposed upon them and order to be recovered from them under Section 77(1) (a) for failure to take service tax registration as per the provisions of Section 69 of the Finance Act, 1994;

(vi) Penalty / late fees, amounting to Rs. **1,60,000/-**, is hereby ordered to be recovered from them for non filing/late filing of Service Tax Returns for the period under question as envisaged under Section 70(1) of the Finance Act, 1994;

(vii) Penalty amounting to Rs. **1,77,46,620/-** *(One Crore Seventy Seven Lakh Forty Six Thousand Six Hundred and Twenty Only)* is hereby imposed upon them and ordered to be recovered from them in terms of the provisions of Section 78 of the Finance Act, 1994. 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 the 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.

(viii) Penalty amounting to Rs. **4,29,773/-** *(Rupees Four Lakh Twenty Nine Thousand Seven Hundred & Seventy Three Only)*, is hereby imposed upon them and ordered to be recovered from them in terms of the provisions of Section 76 of the Finance Act, 1994. However, in view of clause (ii) of the proviso to Section 76 (1), if the amount of Service Tax confirmed and interest thereon is paid within the 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.

(ix) The Show Cause Notices issued vide File no. STC/4-25/Genesis Learning/OA-I/18-19 dated **20/08/2018** and vide File no. STC/4-108/GENESIS/O&A/18-19 dated **27/03/2019** are hereby disposed off in above terms.



(MOHIT AGRAWAL)
Additional Commissioner of CGST,
Ahmedabad South.

F.No. STC/4-25/Genesis Learning/OA-I/18-19 Date: - 16/01/2020

BY REGD POST A.D.
To
M/s. Genesis Learning Initiatives Pvt. Ltd.,
8, Akashneem, opp. Nehru Foundation,
Bodakdev, Ahmedabad – 3800054.

Copy to:
1. The Principal Commissioner, CGST, Ahmedabad South
2. The Assistant Commissioner (RRA), CGST, Ahmedabad South.
3. The Assistant Commissioner, CGST, Division VI, Ahmedabad South.
4. The Superintendent, CGST, Range-I, Division VI, Ahmedabad South.
5. The Assistant Commissioner (System), CGST, Ahmedabad South.
6. File no. STC/4-108/Genesis/O&A 18-19.
7. Guard File.