



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/04-72/Post Master/O&A/19-20  
DIN no. 20200364WS00000M365A

आदेश की तारीख: Date of Order : 16.03.2020

जारी करने की तारीख: Date of Issue : 16.03.2020

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

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मूल आदेश सं./Order-In-Original No.26/Cx-I/Ahmd/ADC/MA/2019

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

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

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

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

The Appeal should be filed in form No. E.A.-1 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त(अपील) में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference :कारण बताओ सूचना फा.सं. F.No. DGGI/AZU/Gr-B/36-146/2019-20 dated 08.11.2019 issued to M/s. Senior Post Master, Navrangpura Head Post Office, Ground Floor, Navrangpura, Ahmedabad - 380006



**3.1** The Senior Superintendent of Post offices, City Division, Ahmedabad, vide their letter No. L2/Misc/Service Tax inquiry/2019 dated 13.05.2019, submitted the month wise Service Tax collected and Service Tax paid for each category in prescribed Performa received from Navrangpura HO, for the period from April-2012 to March-2017 and stated that they have paid service tax through book transfers upto August-2016. Further, he submitted Copy of acknowledgement Receipt of ST-3 Returns for the period 2012-13 to 2015-16 (upto September-2015).

**3.2.** The Senior Post Master, Navrangpura, Head Post Office, Navrangpura-380009, vide letter no. E-108/Service tax Inquiry/2019-20 dated 08.06.2019 and dated 29.08.2019, submitted the month wise details of amount collected service wise separately, for the period from April-2014 to June-2017.

**3.3.** A letter F. No. DGCEI/AZU/12(3)62/2016-17 dated 04.10.2019 was issued to the Post Master, Navrangpura seeking various details of consideration received towards taxable as well as non-taxable or exempt services mentioned in Pt-II Cash Account, detailed description of services provided, Category wise tax paid, details of Cenvat credit availed, details of life insurance premium deducted from the salary of Department of Post employees (month wise), details of agency service provided to persons other than government and copy of agreement signed with the various service recipients (in respect of entities other than government agencies) was called for.

**3.4.** The Senior Post Master, Head Post Office, Navrangpura vide letter no. E101/NVPHO/ST/INF/2019-20 dated 14.10.2019 and E108/NVPHO/Service-Tax/INF/2019-20 dated 25.10.2019 submitted the month wise copy of Cash Book (Part-II) for the period from April-2014 to June-2017, abbreviation list, details of Cenvat Credit availed, details of premium deducted month wise towards postal life insurance from the salary of the Department of Posts employees and information of agency service provided to the BSNL and UGVCL. The HPO Navrangpura mentioned that the service tax was paid through book adjustment up to June-2017 and the book adjustment/transfer of the tax up to June-2017 was not done by them but by the office of the General Manager (Finance), Ahmedabad and the date of such adjustment is not known to them. They have submitted information of the agency service provided to the Bharat Sanchar Nigam Limited and UGVCL. They also mentioned that HPO Navrangpura does not have the copy of the agreement

## **Brief Facts of the Case:**

The **Senior Post Master Navrangpura**, Navrangpura Head Post Office, Ground Floor, Navrangpura, Ahmedabad, Gujarat 380 006, having Service Tax Registration Number **AAAGS0180ESD001(w.e.f. 11.04.2017)**(hereinafter referred to as the 'assessee' or 'said assessee' or '**HPO Navrangpura**' for the sake of brevity) is engaged in providing taxable services under the category of 'Business Auxiliary Services', 'Life Insurance Services', 'Courier Agency Services', etc.

2. The Department of Posts, under the Ministry of Communications and Information Technology, Government of India, is the premier agency engaged in booking, collection and delivery of letters, parcels etc., for commerce and general public. For providing postal services, the whole country has been divided into 23 postal circles, including Gujarat Postal Circle. In Gujarat Postal Circle, the Department of Posts operates through three Regional Offices viz. Ahmedabad, Vadodara and Rajkot. Navrangpura Head Post Office falls under Ahmedabad Region and a total **39** Sub-Post Offices and **14** Branch-Post offices fall under the jurisdiction of Navrangpura Head Post Office. All the cash accounts, reports, abstracts of accounts are being managed, maintained and consolidated by the **Senior Post Master Navrangpura**, HPO Navrangpura for all its Sub-Post offices and Branch Post offices. These Sub-post office and Branch Post offices were not having separate service tax registration.

3. In relation to service tax inquiry, letters F. No. DGCEI/AZU/12(3)62/2016-17 dated 14.10.2016, 10.11.2016, 10.02.2017, 10.04.2017, 01.01.2018, 25.06.2018, 13.07.2018, 07.08.2018, 03.01.2019, 04.02.2019, 20.02.2019, 19.03.2019, 05.04.2019, 25.04.2019, 21.05.2019, 16.08.2019 were issued by the DGCI, Ahmedabad Zonal Unit to the Chief Post Master General/Assistant Director of Postal Services (B&T), Gujarat Circle, Khanpur, Ahmedabad and letter dated 06.09.2019 to the Post Master of Navrangpura HO falling in Ahmedabad Region seeking the details of the services rendered and tax paid thereon. It was requested to provide month-wise amount received for providing services, service tax collected and paid for each category of services provided by way of Speed Post, Express Parcel Post, Life Insurance and Agency Services provided to person other than Government. It was also requested to provide documentary evidence of payment of Service Tax for each category.

made with BSNL and UGVCL to whom they were rendering taxable services. They also stated that documents related to CENVAT credit availed are not available with them and these documents have been submitted to the General Manager (Finance), Ahmedabad. By subsequent email dated 21.10.2019 they were also requested to give the details of the **Unclassified receipts shown in Part II (Receipts) Cash Account** submitted by them, so that taxability of the services under the head Unclassified Receipts can be arrived at and the soft copy of the same for the period April-2014 to June-2017 was submitted by them through email.

4. It was observed that Post offices were maintaining the cash book Accounts in total 4 Parts. These cash accounts are maintained/ consolidated by them for the all Sub Post Offices and Branch Post Offices falling under their jurisdiction, details of the category of Cash book accounts maintained were as under: -

Sr. No.	Category of Cash Book Accounts	Description thereof
1	Part-I (Receipts)	This part contained the Receipts under various saving schemes and loan amount and the same was not relevant for service tax purposes.
2	Part-I (Payment)	This part contained the payment details in relation to Part-I Receipts. (Not relevant for Service Tax purpose)
3	Part-II (Receipts)	<b>This part contained the receipts under various schemes and various services provided by them and include services which are taxable.</b>
4	Part-II (Payment)	This part contained the payment details in relation to Accounting Heads of Part-II Receipts, not relevant for Service tax purpose.

5. The receipts which were mentioned in "Part-II (Receipts)" of the Monthly Cash Account detailed the consideration received towards **total services rendered** along with short description of the services, for the period from 01.04.2014 to 30.06.2017.

6. Regarding taxability of services provided by HPO Navrangpura, it is to highlight that after 01 July 2012 services provided by Government or a local authority, excluding certain services specified under clause (a) of section 66 D are

covered under the Negative List. As per Section 66 D (a) (i) such exclusion covers services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government and are therefore taxable. Further, services wherein consideration in the form of commission/charges is received from Gujarat Electricity Board(GEB)/UGVCL for collection against bills (Retail Post), sale of judicial and non-judicial stamp papers and sale of speed post envelope; "Business post", service which is given on chargeable basis for additional services to various entities for bulk posting of articles; "Bill mail Service", which is the charges from BSNL for posting of telephone bills; "Mobile Money Transfer Service Commission" which is received for mobile money transfer service; "Business post cash on delivery fee" which is collected against cash on delivery (COD)fees on delivery of Business Post Articles etc. rendered by HPO Navrangpura were in relation to business or commerce and thus 'Support Services' which were excluded from negative list under provision of section 66 D (a)(iv). Further, scope of taxability of service provided by government or a local authority was widened with effect from 01.04.2016 vide notification 06/2016-S.T. dated 18.02.2016 by replacing 'Support Services' with 'any services'.

7. The list of taxable services rendered by the HPO Navrangpura,as derived from the Part-II Cash Account was attached as **Annexure-B** to the subject Show Cause Notice.These services, being the service by way of speed post, express parcel post, life insurance and agency services provided to a person other than government (Annexure B -1 to the subject Show Cause Notice) and support services (Annexure B-2 to the subject Show Cause Notice) provided by HPO Navrangpura to business entities against which they have received consideration in the nature of commission/charges are **taxable services**.

8. From other Accounting Heads/Items shown in "Part-II Receipt" of Monthly Cash Account, it is noticed that services by the Department of Posts by way of Speed Post, Express Parcel Post, Life Insurance and Agency services provided to the persons other than Government are taxable. Any other services w.e.f. 01.04.2016 (Prior to 1.4.2016 Support Services) rendered by them to business entities are also taxable. Except these services, the remaining services fall under the Negative list defined under Section 66 D of the Finance Act, 1994 and do not attract levy of Service tax.

**8.1** As discussed, HONavrangpura is engaged in providing taxable as well as non-taxable services. It was observed that there was one account-head with abbreviation as “UCR” (Unclassified Receipts) in “Part II (Receipts)” Cash Account but the nature of account head and whether it was related to a taxable or non-taxable service was not clear. Therefore, email dated 21.10.2019 was sent to the Post Master, Navrangpura at the email id ‘navrangpuraho@indiapost.gov.in’ and in response, they vide email dated 02.11.2019/04.11.2019 sent the details of receipts which were classified under “UCR” for the period from April, 2014 to June, 2017. The list of services/receipts rendered by the HO Navrangpura under UCR category has been scrutinized and it was found that the many sub-heads of the UCR pertain to receipt on account of Salary, pension, sale of old records etc. and the same appear to be **non-taxable**. Apart from these, **remaining receipts** like Business Post, Cheque Return Charge, Media Post, Fee for post box etc. appear to be considerations received for provision of services and hence **taxable**. No reason was put forth by HONavrangpura for claiming all such receipts as not taxable. It was further noticed that the descriptions of sub-heads of the receipts had not been mentioned clearly/categorically by the HO Navrangpura, hence, in the absence of complete description of all services provided by the HONavrangpura under the accounting heading “UCR” (Unclassified receipt), all these remaining receipts under “UCR” had been considered as taxable services. These receipts are considered to be out of negative list as per Annexure-B2 to the subject Show Cause Notice. The sub heads under the UCR head which appear to be ‘Taxable Service’ have been given in **Annexure-D** to the subject Show Cause Notice.

**9.** From the letter dated 25.10.2019, it further transpired that HPONavrangpura had stated to have made payment of service tax through Book Adjustment in respect of taxable services but they have filed the Returns electronically for the period from April-2014 to September-2015 on dated 12/17.04.2017 and ST-3 returns for the period October-2015 to June-2017 have not been filed as per ACES record, as they did not have the registration Number which was obtained on 11.04.2017. It further appears that service tax payment made under the major head-0044 through Book Adjustments till June-2017 is not evidenced by any supporting documents and it is merely mentioned that such accounting book transfers are further made by the General Manager (Finance) Ahmedabad.

**9.1** In their letter dated 25.10.2019; they have mentioned that the service tax has been deposited through book adjustment done by Office of the General Manager (Finance), Ahmedabad. HONavrangpura were required to deposit the tax in the government account as mandated in Rule 6 of the Service Tax Rules, 1994, which

stipulates that Service Tax shall be paid to the credit of the Central Government “electronically through internet banking” by the 6th of the month immediately following the period, when the tax is due. This has not been done by them in the manner prescribed by law.

**9.2** From the total receipts of the “Part II (Receipt)” it was further noticed that HPO Navrangpura has not correctly determined and paid the tax on various taxable services rendered by them including insurance services. There is difference in the value of taxable services rendered as per Part II (Receipt) (pertaining to taxable services therein) and total taxable services shown in the detailed information submitted through various letters upto June-2017. It is also noticed from the Part II Receipts submitted by HPONavrangpura that the Postal Life Insurance (PLI) premium amount deducted from the salaries of their employees, which is leviable to service tax was not reflected in monthly Cash Account (Part-II Receipt) for the purpose of determining taxable value. Thus, HPO Navrangpura has not at all accounted for the taxable value and the service tax collected through PLI in respect of the staff of the Postal Department. It was observed that the details of Postal Life Insurance Premium have been shown in the recovery schedule of the pay bill and same is sent to The Director of Accounts (Postal) and accounting of the same is done in Head-8014, leading to non-payment of service tax, as it is not reflected in the monthly cash account Part II (Receipts).

**9.3** It is also noticed that the claim of HPO Navrangpura of having paid service tax of **Rs. 2,69,270/-** during the period from 01.04.2014 to 30.06.2017 through mechanism of Cenvat Credit availed, is not supported by documents or evidences and they are not having valid Service Tax registration Number, they have not filed ST-3 Returns in time claiming the CENVAT credit. These documents/ST Number/ST-3 Returns are mandatory for availment of Cenvat Credit under Rule 9 of the Cenvat Credit Rules, 2004. HPONavrangpura has not filed ST-3 returns in time, in which they were required to show details of Cenvat Credit availed and utilized as prescribed under Rule 9 of Cenvat Credit Rules 2004 and Rule 4A of Service Tax Rules, 1994 as they did not have the Service Tax Registration Number before 11.04.2017. Furthermore, HPO Navrangpura were providing both taxable services and non-taxable/exempted services, as such they were required to maintain separate accounts of such inputs/input services. However, they failed to follow the provisions prescribed in Rule 6 of Cenvat Credit Rules, 2004. They neither maintained Cenvat Credit accounts separately and nor reversed the credit availed on the input services utilised in rendering non-taxable services. They have not entered any such details in the Returns as they did not file as per requirement of the Cenvat Credit Rules, 2004. Therefore, their claim of eligibility of CENVAT of an amount of **Rs. 2,69,270/-** is untenable being in contravention of Rule 6 and 9



of Cenvat Credit Rules, 2004. Rule 14 of Cenvat Credit Rules, 2004 stipulates that Cenvat Credit wrongly availed and utilised is required to be recovered from the provider of the output service and provisions of Section 73 of the Finance Act shall apply to it. HPO Navrangpura has not made the compliance of Rule 6 and Rule 9 of the Cenvat Credit Rules, 2004, therefore the Cenvat credit of Rs. 2,69,270/- wrongly taken is recoverable from them in terms of Section 73 (1) of the Act read with Rule 14 of the Cenvat Credit Rules, 2004.

## 10. Legal Provisions: -

10.1. The nature of all services provided by the Department of Posts does not fall within the ambit of negative list as defined under Section 66D of the Finance Act, 1994. Section 66D of the Finance Act, 1994 is as under: -

### *[Negative list of services.*

*66D. The negative list shall comprise of the following services, namely: –*

*(a) Services by Government or a local authority **excluding** the following services to the extent they are not covered elsewhere-*

*(i) **Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;***

*(ii) **Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;***

*(iii) **Transport of goods or passengers; or***

*(iv) **Support service [any service (w.e.f. 1.4.2016)] other than services covered under clauses (i) to (iii) above, provided to business entities;]***

10.2 As per Section 66 B of the Finance Act, 1994 Service Tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list as listed under Section 66 D of the Finance Act, 1994 (with effect from 01.07.2012). Further, Section 65 B of the Finance Act, 1994, as amended interprets “Services” and “taxable services” as under:

*[65B. Interpretations: In this Chapter, unless the context otherwise requires, –*

.....

*(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, .....*

*.....*

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

**10.3** Further, Section 66B of the Finance Act, 1994, as amended, governs the taxability of all services and stipulates as under:

*[Section 66B: Charge of service tax on and after Finance Act, 2012. - There shall be levied a tax (hereinafter referred to as the service tax) at the rate of (as applicable from time to time) on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.]*

**10.4** The valuation of the service will be determined in accordance with Section 67 of the Act *ibid* which stipulates as under:

*[SECTION 67. Valuation of taxable services for charging service tax.—*

*(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —*

*(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him; .....*]

**10.5** Section 68 of the Act *ibid* stipulates as under:

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

**10.6** As regards valuation of taxable service of Life Insurance, Rule 6 (7A) of the Service Tax Rules, 1994 during the material period read as under: -

*[(7A) An insurer carrying on life insurance business shall have the option to pay tax:*

*(i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;*

*(ii) in all other cases, 3per cent [3.5per cent (w.e.f. 01.06.2015)] of the premium charged from policy holder in the first year and 1.5per cent [1.75per cent (w.e.f. 01.06.2015)]of the premium charged from policy holder in the subsequent years;*

**10.7** Further, clause (ia) was inserted after clause (i) under sub-rule (7A) of Rule 6 of the Service tax Rules, 1994 by Notification No. 19/2016 - Service Tax dated 01.03.2016, w.e.f. 01.04.2016,as under: -

*[(ia) in case of single premium annuity policies other than (i) above, 1.4 per cent. of the single premium charged from the policy holder;]*

**10.8** Further, a new sub-rule 6 (7D) was inserted vide Notification No. 25/2015 - Service Tax dated 12.11.2015 w.e.f. 15.11.2015 for **payment of Swachh Bharat Cess**, which is as under: -

*[(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No.22/2015-Service Tax, dated the 6<sup>th</sup> November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 843 (E), dated the 6<sup>th</sup> November, 2015, and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.]*

**10.9** Further, sub-rule (7D) was amended vide Notification No. 31/2016 - Service Tax dated 26.05.2016 w.e.f. 01.06.2016 for **payment of Swachh Bharat Cess** as under: -

*[(i) in sub-rule (7D), for the figures "0.5" the words "effective rate of Swachh Bharat Cess" and for the words, figures and brackets "14 (fourteen)", the words and figures "rate of service tax specified in section 66B of the Finance Act, 1994" shall be substituted;]*

**10.10** Further, a new sub-rule (7E) was inserted vide Notification No. 31/2016 - Service Tax dated 26.05.2016 w.e.f. 01.06.2016 for **levy of Krishi Kalyan Cess** as under: -

*[(7E) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by effective rate of Krishi Kalyan Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994, during any calendar month or quarter, as the case may be, towards the discharge of his liability for Krishi Kalyan Cess instead of paying Krishi Kalyan Cess at the rate specified in sub-section (2) of section 161 of the Finance Act, 2016 (28 of 2016) and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.]*

**10.11** The premium amount for Postal Life Insurance covers risk factor as well as investment/savings. As per letter No. 29-09/2013-U/Ser. Tax/ Sales tax dated 23.12.2014 of the Chief General Manager of Postal Life Insurance Directorate, New Delhi, the Postal Department decided to collect service tax on Insurance Premium from all PLI & RPLI policy holders w.e.f. 01.01.2015. Accordingly, they are liable to pay Service Tax under composition scheme w.e.f. 01.01.2015 at the following rate during relevant period: -

SN	Period	Service Tax Rate on 1 <sup>st</sup> Year Premium	Service Tax including cess	Service Tax Rate on Renewal Premium	Service Tax including cess
1	01.01.2015 to	3 % + 2% E. Cess (on tax)	3.09%	1.5% + 2%E. Cess	1.545

	31.05.2015	& 1% SHE. Cess (on tax) thereon		& 1% SHE. Cess thereon	
2	01.06.2015 to 14.11.2015	3.5%	3.5%	1.75%	1.75
3	15.11.2015 to 31.05.2016	3.5% + 0.125% SB Cess	3.625%	1.75% + 0.0625% SB Cess	1.813
4	01.06.2016 to 30.06.2017	3.5% + 0.125% SB Cess + 0.125% KK Cess	3.75%	1.75% + 0.0625% SB Cess + 0.0625% KK Cess	1.875

**10.12** The rate of Service Tax and levy of Secondary and Higher Education Cess, Swachh Bharat Cess, Krishi Kalyan Cess, for the period covered under the Show Cause Notice is as follows:-

SN	Period	Service Tax Rate	Total Service Tax Rate (Including cess)
1	01.04.2014 to 31.05.2015	12% + 2% E. Cess + 1% SHE. Cess	12.36%
2	01.06.2015 to 14.11.2015	14%	14%
3	15.11.2015 to 31.05.2016	14% + 0.5% SB Cess	14.5%
4	01.06.2016 to 30.06.2017	14% + 0.5% SB Cess + 0.5% KK Cess	15%

**10.13** Regarding issuance of invoice, bill or challan, Rule 4A of the Service Tax Rules, 1994 provides as under:-

**4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan - (1)** Every person providing taxable service, not later than thirty days from the date of completion of

*such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-*

- (i) the name, address and the registration number of such person;*
- (ii) the name and address of the person receiving taxable service;*
- (iii) description and value of taxable service provided or agreed to be provided; and*
- (iv) the service tax payable thereon.*

**10.14** Regarding payment of service tax, Rule 6 of the Service Tax Rules, 1994 provides as under:-

***[6. Payment of service tax***

*(1) The service tax shall be paid to the credit of the Central Government, -*

*(i) by the 6th day of the month, if the duty is **deposited electronically** through internet banking; and*

*(ii) by the 5th day of the month, in any other case,*

*immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard:]*

**10.15** Regarding filing of service tax returns, Rule 7 of the Service Tax Rules, 1994 provides as under:-

***[RULE 7. Returns. -***

*(1) Every assessee shall submit a half yearly return in Form 'ST-3' or ST-3A, as the case may be, along with a copy of the Form TR-6,*

.....

*“(2) Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year. “ .. ... ..*

*(3) Every assessee shall submit the half-yearly return electronically.]*

**10.16** Regarding conditions for allowing Cenvat Credit, Rule 4 of the Cenvat Credit Rules, 2004 provides as under:-

***[RULE 4. Conditions for allowing CENVAT credit. –***

*(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacture or in the premises of the provider of output service or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacture or the provider of output service, as the case may be:*

*Provided that .....*

*Provided further that .....*

***Provided also that the manufacture or the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule (1) of rule 9.]***

**10.17** Regarding obligation of a manufacturer or producer of final products and a provider of output service, Rule 6 of the Cenvat Credit Rules, 2004 provides as under:-

***[RULE 6. Obligation of a manufacturer or producer of final products and a provider of output service.—***

*(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :*

***Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.***

**Explanation 1.** - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

**Explanation 2.** - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

**Explanation 3.** - For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994 provided that such activity has used inputs or input services.

**Explanation 4.** - Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.]

(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.

(3) (a) A manufacturer who manufactures two classes of goods, namely :-

- (i) non-exempted goods removed;
- (ii) exempted goods removed;

or a provider of output service who provides two classes of services, namely :-

- (i) non-exempted services;
- (ii) exempted services,

shall follow any one of the following options applicable to him, namely :-

- (i) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or
- (ii) pay an amount as determined under sub-rule (3A) :

**Provided** that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

**Provided** further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be seven per cent of the value so exempted :

**Provided** also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two per cent of value of the exempted services.

**Explanation 1.** - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.



**Explanation 2.-** No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

**Explanation 3. -** For the purposes of this sub-rule and sub-rule (3A),-

(a) "non-exempted goods removed" means the final products excluding exempted goods manufactured and cleared upto the place of removal;

(b) "exempted goods removed" means the exempted goods manufactured and cleared upto the place of removal;

(c) "non-exempted services" means the output services excluding exempted services.

(3A) For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

- (i) name, address and registration number of the manufacturer of goods or provider of output service;
- (ii) date from which the option under this clause is exercised or proposed to be exercised;
- (iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;
- (iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;
- (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

**10.18** Regarding documents on the basis of which credit can be taken, Rule 9 of the Cenvat Credit Rules, 2004 provides as under:-

**[RULE 9. Documents and accounts. –**

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely: -

- (a) an invoice ....
- (b) a supplementary invoice, .....
- (c) a bill of entry; or
- (d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or
- (e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

- (f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or
- (g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

**10.19** Regarding Recovery of CENVAT credit wrongly taken or erroneously refunded, Rule 14 of the Cenvat Credit Rules, 2004 provides as under:-

***[Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. -***

(1) (i) .....

(ii) *Where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.]*

**10.20** Regarding self-assessment, **Section 70 of the Finance Act, 1994** provides that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. Further Rule 7 of the Service Tax Rules, 1994, prescribes that every assessee shall submit a half-yearly return in Form ST-3, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly returns and every assessee shall submit the half yearly return, electronically, by the 25<sup>th</sup> of the month following the particular half-year.

**10.21** Regarding penalty for failure to pay service tax for reasons of fraud, etc., **Section 78 of the Finance Act, 1994** provides as under:-

***[SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —***

*(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the*

*notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :]*

**10.22** Regarding Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere, Section 77 of the Finance Act, 1994 provides as under:-

***[SECTION 77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. —***

*(1) Any person, —*

*(a).....*

*(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to ten thousand rupees;*

*(c) who fails to —*

*(i).....*

*(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or*

*(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees;*

*(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.]*

**11.** It further appears that even after the enactment of the Central Goods and Service Tax Act, 2017 (CGST Act, 2017), with effect from 01.07.2017, the provisions of the Central Excise Act, 1944 and also the Finance Act, 1994 and rules made thereunder pertaining to investigation, inquiry, assessment proceedings, adjudication etc., remains unaffected and are saved by virtue of Section 174 (2) of the Central Goods & Services Tax Act, 2017.

**11.1** The PLI premium amount deducted from the salary of the employees of the assessee are also taxable and the details thereof has been submitted by them vide their letter dated 14.10.2019 and the same has not been found to be included in monthly Cash Account Part-II (Receipt).

**11.2** The assessee has filed ST-3 Returns for the period from April-14 to September-15 on 12/17.04.2017 and for remaining period they did not file ST-3 Return. However, they have submitted the details of amount of Service tax collected and transferred through **Book Transfer** by the GM (Finance), Ahmedabad. As per the Cash Account of Part-II (Receipt) submitted vide their letter dated 14.10.2019, it is seen that they have collected service tax of **Rs. 2,70,22,041/-** for the period from April 2014 to June 2017 (not being considered for demand, being liability as per Cash Account of Part-II (Receipt) except the inadmissible Cenvat credit). As informed by HPO Navrangpura vide their letter dated 25.10.2019 that they have made payment of Service Tax by way of book adjustment upto June 2017, it is considered that they have made payment of **Rs. 2,67,52,771/-** of service tax through book Adjustment and payment of **Rs. 2,69,270/-** through CENVAT Credit availed by them. However, they have not shown any debit of this CENVAT Credit in returns except for the period April-2014 to September-15 which they filed on 12/17.04.2017 and they have not filed remaining period ST-3 Returns. They have also not determined the tax liability correctly and appear to have short-paid the service tax on the taxable income which are mentioned in their Part II (Receipt) cash account. Therefore, HPO-Navrangpura are liable to pay the service tax which has been short paid/not paid for the period from April-2014 till June, 2017 along with applicable interest and penalty.

**11.3** The assessee had shown Cenvat amount in ST-3 return for the period from April-2014 to September-15 filed on 12/17.04.2017. It is noticed that they neither had Service Tax Registration nor filed ST-3 Returns before 11.04.2017. Further, they had not debited this Cenvat amount of Rs. 2,69,270/- in time. They failed to produce any record and documents on the basis of which they have availed Cenvat credit and as such have contravened the provisions of Rule 9 of the Cenvat Credit Rules. Moreover, they have provided both taxable as well as non-taxable services but have not followed proper procedure as provided under Rule 6 (3) of the CENVAT Credit Rules, 2004. They did not maintain and produce the separate records as required under Rule 6 of the CENVAT Credit Rules, 2004. As such Cenvat availed, as per the Table 'A' below, by them is not proper and same is liable to be treated as inadmissible.

Table A

F Y	Period	Return filed/Not filed	Delayed Days	Gross taxable value	Tax payable (As per Cash Account f Part-II (Receipt))	Cenvat availed Rs.
2014-15	Apr-Sept	Filed on 12.04.2017	880	18185680	2241670	60440
2014-15	Oct-March	Filed on 12.04.2017	718	27558293	3403233	38035
2015-16	Apr-Sept	Filed on 17.04.2017	540	56368010	4444783	36478
2015-16	Oct-March	Not filed		30030809	4422788	37443
2016-17	Apr-Sept	Not filed		27532929	4879855	38210
2016-17	Oct-March	Not filed		29902901	4583451	40321
2017-18	Apr-Sept	Not filed		20682520	3046261	19343
	<b>Total</b>			<b>210261142</b>	<b>27022041</b>	<b>269270</b>

11.4 Further, it is observed that Navrangpura HO have filed ST-3 Return late on 12/17.04.2017 for the period April 2014 to September-15 and for remaining period they have not filed returns and contravened the provisions of Rule 7 of the Service Tax Rules 1994 read with Section 70 (1) of the Finance Act 1994. Section 70 of the Act ibid stipulates as under:-

***[Section 70. Furnishing of returns.***

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

**11.5** Rule 7 C of the Service Tax Rules, 1994 which is in relation to the amount to be paid for delay in furnishing prescribed returns makes the person liable to furnish the return according to the period of delay. Rule 7 C (1) of the Service Tax Rules 1994 reads as under:-

***[7C. Amount to be paid for delay in furnishing the prescribed return. -***

*(1) Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-*

*(i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;*

*(ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and*

*(iii) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return:]*

**11.6** As such it appears that there is delay in filing of the return. The returns prescribed under rule 7 is not furnished by HO Navrangpura on the due date prescribed for submission of such return, and therefore Navrangpura HO rendered themselves liable to pay the late fees as prescribed under Rule 7C of Service Tax Rules 1994.

**12.** From the above said discussion, it appears that:

- (i) Services provided by HPO–Navrangpura listed in Part II (Receipt) cash account, are taxable except those which are in negative list;
- (ii) HPO–Navrangpura had provided Life Insurance Services under various Postal Life Insurance schemes on which HPO-Navrangpura are liable to pay Service Tax w.e.f. 01.01.2015;

- (iii) HPO–Navrangpura are also liable to pay service tax on the PLI premium amount deducted from the salary of their employees, which was not reflected in Part-II (Receipt) Cash Account, as per details provided by them;
- (iv) The Cenvat amount of **Rs. 2,69,270/-** adjusted against liability not shown in ST-3 returns is not admissible to them as they did not have the ST Number/did not file ST-3 Returns /did not produce documents and did not maintain the accounts as required under the law in contravention of Rule 4, 6 and 9 of the Cenvat Credit Rules 2004;
- (v) HPO–Navrangpura has short paid/not paid the service tax during the period from 01.04.2014 to 30.06.2017 and they are liable to pay the differential amount of tax not paid/short paid by them.
- (vi) HPO–Navrangpura has filed the ST-3 Returns for the period from April-2014 to September-2015 late and for remaining period they have not filed returns. Thus they have rendered themselves liable to pay late fees as prescribed under Rule 7C of Service Tax Rules, 1994.

**13.1.** HPO–Navrangpura are liable to pay service tax at appropriate rate on the Account Heads as mentioned in **Annexure B** (list of taxable services rendered) and in Annexure D (List of Taxable Services under Account head UCR-Unclassified Receipts) annexed to the subject SCN. The service tax payable by them on services other than postal life insurance has been worked out in **Table B** as follows:-

<b>Table B</b>							
Amount in Rs.							
Period	Speed Post Revenue, BNPL (S. Post), SPCOD Fee, EPCOD Fee, BPCOD Fee, EPP Revenue, Business Post etc.		Unclassified Receipts from Part-II (Receipts)			Total Taxable Value	Total Service tax Payable
	Taxable value taken from the Monthly Cash Account and duly verified by Sr. Post Master, Navrangpura	Service Tax Payable	Total Amount under the UCR Head	Taxable Value under the UCR Head*	Service tax Payable		

	A	B		C	D	E=(A+C)	F=(B+D)
2014-15	38327919	4737331	497765403	3489694	431326	41817613	5168657
2015-16	37426998	5207533	296657676	1860409	260080	39287407	5467613
2016-17	39616134	5910247	605040194	1017458	151416	40633592	6061663
2017-18	12569123	1885368	134763838	808840	121326	13377963	2006694
<b>Total</b>	<b>127940174</b>	<b>17740479</b>	<b>1534227111</b>	<b>7176401</b>	<b>964148</b>	<b>135116575</b>	<b>18704627</b>

\*Excluding the amount in respect of entries Salary, pension, sale of old records etc. as per schedule of Unclassified Receipts (UCR) provided by the Sr. Post Master HPO-Navrangpura vide email dated 02/04.11.2019.

**13.2.** The assessee is liable to pay service tax from January-2015 on the PLI premium amount shown in the Cash Accounts towards premium and towards renewal of the policy. They are also liable to pay Service tax on PLI premium amount and renewal premium collected towards policy and deducted from the salary of their employees, which has not been shown in "Part II Receipt" of Cash Accounts. The details on the taxable value and the tax amount on which HPO Navrangpura are liable to pay Service Tax has been worked out in Table C, shown hereunder: -

**Table - C**  
**Life Insurance services**  
**(Amt. in Rs.)**

Period	Taxable value for First Year* Premium	Service Tax payable on column A	Taxable value for Renewal	Service Tax payable on column C	Amount of premium deducted from the salary of DOP Employee	Service Tax Collected but NOT Paid	Total Taxable Value	Total S. Tax payable
	[PLI FY, Mccamish FY, RPLI FY, MACC PLI FY, etc]		[PLI Renew, PLI Mccamish Renew, RPLIMAC Renew, PLI Rural, E-Post PLI, PLI etc]					
	A	B	C	D	E	F	G (A+C+E)	H (B+D+F)
2014-15 (w.e.f. 01.01.2015)	4993157	154289	53124428	820772	0	0	58117585	975061
2015-16	26472848	926805	222574768	3853361	20859032	385801	269906648	5165967
2016-17	24936855	930088	227971930	4242663	24079436	456253	276988221	5629004
2017-18	7410229	277884	70890081	1329189	6282214	129658	84582524	1736731



Total	63813089	2289064	574561207	10245986	51220682	971712	689594978	13506762
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\*taken from the Monthly Part II Receipt and as provided by Sr. postmaster, duly verified

**13.3** In view of the above, the total Service Tax payable by them and Service Tax payment made through Book Adjustments as per details submitted by them duly verified by the Post Master, Navrangpura, Ahmedabad for the period April-2014 to June-2017 are detailed in Table D hereunder. Detailed list of the services provided, taxable value, rate of tax for the different periods and tax amount month-wise is attached as Annexure C to the subject SCN.

Table – D

Period	Total Taxable Value (in Rs.) [Table B+C]	Total Service Tax Payable (in Rs.) [Table B+C]	Total Service tax liability self-assessed and admitted as per Part-II submitted by the PM duly verified [Table A]	Service Tax short paid/ not paid	Irregular CENVAT credit availed	Total liability including CENVAT and Service Tax required to be recovered
April-2014 to June-2017	824711553	32211389	27022041	<b>5189348</b>	<b>269270</b>	<b>5458618</b>

**13.4** In view of the above facts, HPO–Navrangpura have made short payment of Service Tax amounting to **Rs.51,89,348/-** and have irregularly availed the CENVAT Credit of **Rs.2,69,270/-**, during the period from April-14 to June-17 as detailed in **Table D** above.

#### **14. Contraventions of legal provisions and justification for invoking extended period.**

**14.1** The assessee has failed to assess their correct taxable value and Service Tax liability thereof, did not obtain ST Number in time and did not file ST-3 Returns in time. It appears that HPO-Navrangpura have contravened the following provisions:

- Rule 4, 6(3) and 9 of Cenvat Credit Rules, 2004 in as much as HPO-Navrangpura have availed and utilized inadmissible Cenvat but failed to maintain proper documents/ST-3 not filed/ST Number not obtained;
- Sections 66B of Finance Act, 1994 read with Rule 4A of Service Tax Rules 1994 in as much as HPO-Navrangpura have not charged and collected Service Tax at applicable rate on invoice;

- Section 67 of the Finance Act 1994 in as much as HPO-Navrangpura have failed to ascertain the correct taxable value;
- Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules 1994 in as much as HPO-Navrangpura have failed to deposit Service Tax liability in the government exchequer;
- Section 70 of the Finance Act 1994 read with Rule 7 of the Service Tax Rules 1994 in as much as HPO-Navrangpura have failed to file the ST-3 returns electronically;

**14.2** It is pertinent to mention here that the system of self-assessment is in vogue in respect of Central Excise as well as Service Tax. In the scheme of self-assessment, the department comes to know about the tax liability and payment made only during the scrutiny of the statutory returns filed by the service providers. It is seen from the facts emerged during the investigation of the instant case that HPO-Navrangpura have contravened the provisions under the Finance Act, 1994 and rules made thereunder.

**14.3** It may be mentioned here that HPO-Navrangpura had never sought any clarification/correction from the department about their service tax liability and compliance procedures and did not submitted the complete information of the services rendered and tax paid on it. The information about the services on which tax was not charged, collected and paid provided by them was never declared to the department. Therefore, extended period of limitation under proviso to Section 73(1) of the Finance Act is invokable. In view of these acts of omission and commission done by them by way of contravention of the provisions of Section 66B, 67 and 68 69 and 70 of the Finance Act, 1994 and Rules made there-under, HPO-Navrangpura have rendered themselves liable for the penalty under the provisions of Section 76, 77 and/or 78 of the Act *ibid* read with Rule 15 (1) and Rule 15 (3) of Cenvat Credit Rules, 2004.

**14.4** Whereas it further appears that HPO Navrangpura has failed to maintain accounts in accordance with rules and failed to produce the documents on the basis of which they took the Cenvat and have also failed to pay service tax electronically through internet banking. They also failed to maintain the books of account and other documents as prescribed under the Acts and Rules made thereunder. Therefore, penalty under Section 77(1) (b) of the Finance Act, 1994 appears to be leviable on HPO Navrangpura.

15. Therefore, it appears that, taxable service provided by them but failed to obtain Service Tax Registration and amounts realized was not correctly declared/shown to the department in ST-3 returns as they have failed to file ST-3 Returns. The ingredients for invoking the extended period under proviso to Section 73(1) of the Finance Act, 1994, exist for demanding and recovering Service Tax including CENVAT Credit amounting to **Rs. 54,58,618/- (Rupees Fifty Four Lakhs Fifty Eight thousand Six Hundred Eighteen only)** including Cess under proviso to Section 73 along with interest under Section 75 of the Finance Act, 1994 and penalty under the provisions of Section 76, 77 and/or 78 of the Act ibid read with Rule 15 (1) and Rule 15 (3) of Cenvat Credit Rules, 2004.

16. Therefore, **The Senior Post Master Navrangpura**, Navrangpura Head Post Office, Ground Floor, Navrangpura, Ahmedabad, Gujarat 380 006, having Service Tax Registration Number **AAAGS0180ESD001**, were called upon by the Joint Director, Ahmedabad Zonal Unit, Directorate General of GST Intelligence, Ahmedabad, vide Show Cause Notice no. DGGI/AZU/Gr.B/36-146/2019-20 dated 08.09.2019, issued from File no. DGGI/AZU/12(03)62/2016-17/Pt. I Navrangpura, to show cause to the Additional/Joint Commissioner, CGST, Ahmedabad South Commissionerate, having his office at 6<sup>th</sup> Floor, GST Bhawan, Panjrapole, Ambawadi, Ahmedabad, as to why:

- A) The receipt shown under the various Account Heads in Part II Receipt of Cash Account should not be considered as taxable for charging of service tax in terms of Section 67 of the Finance Act, 1994; Service Tax amounting to **Rs. 51,89,348/- (Rupees Fifty-One Lakhs Eighty-Nine Thousand Three Hundred Forty-Eight only)** including Cess, as detailed hereinabove, should not be demanded and recovered from them under proviso to Section 73 (1) of the Finance Act, 1994, read with Section 174 of the CGST Act, 2017;
- B) Interest at the appropriate rates should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 in respect of demand at 'A' above read with Section 174 of the CGST Act, 2017;
- C) Penalty should not be imposed on them separately under Section 76 and/or 78 read with Section 174 of the CGST Act, 2017;
- D) The amount of **Rs.2,69,270/- (Rupees Two Lakhs Sixty-Nine thousand Two hundred Seventy only)** Cenvat Credit availed by them should not be denied/demanded under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994;
- E) Interest at the appropriate rates should not be demanded and recovered from them under rule 14 of Cenvat Credit Rules 2004 read with Section 75 of the Finance Act, 1994 in respect of demand at 'D' above read with Section 174 of the CGST Act, 2017;

- F) Penalty should not be imposed upon them under Rule 15 (1) and Rule 15 (3) read with Section 78 for incorrect availment of Cenvat Credit as mentioned at D above;
- G) Fees for not/Late filing of ST-3 returns for the period April-2014 to June, 2017 should not be imposed upon them under the provisions of Section 70 (1) of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994; and
- H) Penalty under Section 77 1(b) of the Finance Act, 1994 should not be imposed upon them.

### **Defense Reply:**

17. The said assessee replied to the said SCN, vide their letter no. E-108/NVP HO/Service Tax/2019 dated 11/12/2019. Gist of their reply is reproduced below:

17.1 The Department of Posts is a Government Department working under Ministry of Communications. The whole operational and accounting work is done by Departmental software designed centrally by Department of Posts and modified time to time complying with other laws. The value of taxable services and service tax collected were auto-populating in the part-II of Cash Book on the basis of collection done in Meghdoot Millennium Software. The service tax return was filed by their office on the basis of service tax collection under various heads reflected in the Part-II of the Cash Book.

17.2 In respect of the amount of premium of Postal Life Insurance deducted from the salaries of the employees, it was submitted that there was no provision in the software to reflect the figure of amount of Postal Life Insurance deducted from the salaries of the employees in Part-II of the Cash Book but the service tax recovered on the amount of Postal Life Insurance deducted from the salaries of the employee was transferred through Book Adjustment by the O/o GM (Finance), Ahmedabad.

17.3 In respect of taxability of support services, it was submitted that the memo regarding exclusion of support services such as Bill Mail Service, MMTS, BPCOD from negative list from 01.04.2016 and thereby falling under ambit of service tax is not available with them. Figures of all the above services were auto populating in Part-II of Cash Book. Hence it was not possible to ascertain whether any service tax was collected on these services.

**17.4** In respect of the documents for availing Cenvat Credit, it was submitted that only one copy of sanction along with one copy of bill was being received by their office and as per Rule 367 of FHB Vol. I, vouchers amounting to Rs. 200/- and above had to be submitted to O/o GM (Finance) and accordingly their office had submitted all the vouchers in due course.

**17.5** In respect of non-registration and non-filing of ST-3 returns, it was submitted that an application for the fresh Service Tax Number was made online and Service Tax Number was obtained on 11/04/2017, and the very next day ST-3 return till Sept-15 were filed and amount for the period of October-16 to June-17 was deposited by cheque in favour of "BOB Account Service Tax", which was cleared on 27/06/2017. Efforts for obtaining new user Id and Password to file the rest of the ST-3 return is being made and the same will be filed shortly.

**17.6** In respect of short-payment of service tax, it was submitted that the value of taxable services and service tax collected were auto-populating in the part-II of Cash Book on the basis of collection done in Meghdoot Millennium Software and service tax was paid accordingly. There was no any information available with them to cover the items mentioned under the UCR-Unclassified Receipts, under the criteria of services and no any provision was available in Meghdoot Millennium software to collect tax on any of these.

**17.7** In respect of contravention of the provisions of Service Tax Law, it was submitted that they have not contravened the provision of rules and paid the service tax accounted for in Part-II of the Cash Book and availed Cenvat Credit on the basis of records available with them. The account has been maintained as per rules available and laid by the Department on the subject and Cenvat Credit was availed on the basis of records available with them. No objection was raised in this regards by any of the authority and internal inspections and any information, as and when sought, was furnished by them regularly. The service tax was paid on the basis of figures auto populated in Part-II of Cash Book and Cenvat Credit was availed on the basis of records available with them hence there was no short payment of service tax as per their records.

**18.** The case was posted for personal hearing on 03.02.2020, when Shri A. R. Shah, Senior Post Master, appeared himself and re-iterated their earlier submission dated 11.12.2019.

## **Discussion and Findings:**

19. I have carefully gone through the Show Cause Notice, relevant case records and the assessee's submissions both, in person and in written. Demand of service tax has been raised in the SCN on the basis of the following three counts:

- a. Short-payment of service tax on account of improper assessment of various taxable services provided by the assessee;
- b. Wrong availment of Cenvat credit in violation of Cenvat Credit Rules, 2004; and
- c. Non filing or delayed filing of ST-3 returns and suppression of facts.

20. I will proceed to consider each issue on its merits.

**(a). Short-payment of service tax on account of improper assessment of various taxable services provided by the assessee.**

20.1 It has been alleged in the Show Cause Notice that the assessee had not obtained registration under service tax, however they were providing taxable services and were required to obtain the service tax registration to comply with the service tax provisions. Further the assessee has provided services attracting service tax to the tune of **Rs. 3,22,11,389/-** during the period from April, 2014 to June, 2017. However the assessee has shown to have paid service tax amounting to **Rs. 2,70,22,041/-** only. Thus they have short-paid service tax amounting to **Rs. 51,89,348/-** during the period from April, 2014 to June, 2017.

20.2 The assessee has submitted that the value of taxable services and service tax collected were auto-populating in the part-II of Cash Book on the basis of collection done in Meghdoot Millennium Software and service tax was paid accordingly. There was no any information available with them to cover the items mentioned under the UCR-Unclassified Receipts, under the criteria of services and no any provision was available in Meghdoot Millennium software to collect tax on any of these services. In respect of the amount of premium of Postal Life Insurance deducted from the salaries of the employees, it was submitted that there was no provision in the software to reflect the figure of amount of Postal Life Insurance deducted from the salaries of the employees in Part-II of the Cash Book. In respect of taxability of support services, it was submitted that the memo regarding exclusion of support services such as Bill Mail Service, MMTS, BPCOD from negative list and thereby falling under ambit of service tax is not available with them. Figures of all the above services were auto populating in Part-II of Cash Book. Hence it was not possible to ascertain whether any service tax was collected on these services.

20.3 I find that the contention of the assessee itself approves the allegations of the SCN. The assessee had not taken care to synchronise their software to make it compatible with the taxation laws. They have not taken care to apply service tax

on all of the taxable services and many of the services were left to be taxed and no service tax is collected on them. They have shown their ignorance about the taxability of some of the taxable services provided by them. Ignorance of laws cannot be an excuse for contravention of law and the law has to take its own course. The calculation of short-paid amount as alleged in the SCN, is based upon the data submitted by the assessee themselves and properly verified by the Senior Post Master, Navrangpura HO. At the adjudication stage also, they have not disputed the calculation of short-paid amount of service tax. Therefore they are liable to pay the differential short-paid service tax amounting to **Rs. 51,89,348/-** for the period from April, 2014 to June, 2017, as alleged in the SCN and the same is required to be recovered from them under proviso to Section 73(1) of the Finance Act, 1994. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the service tax on the assessee. The definition of "assessment" available in Rule 2(1)(b) of Service Tax Rules, 1994 is reproduced as follows:

*"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.*

**20.4** I find that the assessee has failed to properly assess the service tax liability and also failed to file the service tax returns in time and failed to reflect the correct information in the ST-3 returns. Accordingly, I find that the amount of service tax short-paid as discussed here-in-above, is liable to be recovered by invoking the extended period of limitation as provided for under Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994. As per Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 as amended, every person providing taxable service to any person is liable to pay Service Tax at the rate prescribed in Section 66, to Central Government by the 5<sup>th</sup> of the month /quarter immediately following the calendar month / quarter in which the payments were received towards the value of taxable services (except for the month of March which was required to be paid on 31<sup>st</sup> March). As per Section 70 of the Finance Act, 1994 every person liable to pay Service Tax was 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. The said assessee had not disclosed full, true and correct information about the value of the service provided by them liable for payment of service tax. Thus, there was a deliberate withholding of essential and material information from the department

and all these material information had been concealed from the department and thus payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73 (1) of the Finance Act, 1994 to demand the Service Tax not paid. As per Section 75 of the Act *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.

**20.5** On the basis of the above facts and discussions, I hold that the said assessee has contravened the provisions of Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994, as they have failed to pay service tax at the rate specified in section 66B in such manner and within such period as prescribed. The said assessee has also contravened the provisions of Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed. All these acts of contravention of the provisions of Section 68, and Section 70 of the Finance Act, 1994 read with Rules 6 and 7 of the Service Tax Rules, 1994 are punishable under the provisions of Section 78 of the Finance Act, 1994 as amended time to time.

**20.6** The Government has from the very beginning placed full trust on the service provider and accordingly measures like Self-assessments etc., based on mutual trust and confidence were in place and a considerable amount of trust was placed on the service provider and private records maintained by him for normal business purposes were accepted, practically for all the purposes 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, no matter how innocently. From the evidences, I find that the said assessee has failed to file ST-3 returns in time and declare the correct value, of taxable services received, in the ST-3 Returns and has also short paid the Service Tax thereon in utter disregard to the requirements of law and in breach of trust placed on them and such defiance of law has rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with intent to evade payment of Service Tax .

**20.7** I find that the said assessee failed to assess Service Tax on the said service under Section 68 read with Rule 2(1)(b) of Service Tax Rules, 1994; failed to pay Service Tax as provided under Rule 6 of Service Tax Rules, 1994; failed to declare the true taxable value in their ST-3 returns under Section 70 of the Finance



Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and thereby suppressed material facts. The said acts and omission on their part appears to have been committed with an intent to evade payment of Service Tax and accordingly the unpaid Service Tax payable on taxable service is required to be recovered from the said assessee under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75. The said act on the part of the assessee has also made them liable to penalty under Section 78 of the Finance Act, 1994.

**(b). Wrong availment of Cenvat credit in violation of of Cenvat Credit Rules, 2004.**

**20.8** It has been alleged in the Show Cause Notice that the assessee had availed and utilised Cenvat credit amounting to Rs. 2,69,270/- during the period from April, 2014 to June, 2017. However they were not registered under service tax till 11.04.2017 and no service tax returns were filed by them till 12.04.2017. No records in respect of Cenvat Credit availed, were produced for verification when demanded by the officers of the DGGI, Ahmedabad and eligibility of the Cenvat credit availed by the assessee could not be verified. These documents were mandatory for availment of Cenvat Credit under Rule 9 of the Cenvat Credit Rules, 2004. HPO Navrangpura has not filed ST-3 returns in time, in which they were required to show details of Cenvat Credit availed and utilized as prescribed under Rule 9 of Cenvat Credit Rules 2004 and Rule 4A of Service Tax Rules, 1994 as they did not have the Service Tax Registration Number before 11.04.2017. Furthermore, HPO Navrangpura were providing both taxable services and non-taxable/exempted services, as such they were required to maintain separate accounts of such inputs/input services and would avail credit on inputs/input services attributable to taxable services only. However, they failed to follow the provisions prescribed in Rule 6 of Cenvat Credit Rules, 2004. They have also failed to fulfil conditions envisaged under Rule 4 of Cenvat Credit Rules, 2004.

**20.9** The assessee has submitted that only one copy of sanction along with one copy of bill was being received by their office and as per Rule 367 of FHB Vol. I, vouchers amounting to Rs. 200/- and above had to be submitted to the office of the GM (Finance) and accordingly their office had submitted all the vouchers in due course to the office of their GM (Finance).

**20.10** I find that the contention of the assessee itself approves the allegations of the SCN. The assessee took the plea that the required documents had been sent to the office of their GM (Finance). But being the person liable to pay service tax on the services provided by them and being provider of service, they were liable, as envisaged under Rule 9(5) of Cenvat Credit Rules, to maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods

in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded. They were also liable, as envisaged under Rule 9(6) of Cenvat Credit Rules, to maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded. As per Rule 9(9) of Cenvat Credit Rules, they were further required to submit a half yearly return in form ST-3. They were also required to retain books of account and other documents as required in accordance with the provisions of Service Tax Laws and produce the same when called for by a Central Excise Officer as envisaged under Section 83 of the Finance Act, 1994 read with Section 14 of Central Excise Act, 1944. I find that the said assessee has wrongly availed and utilized credit of service tax, amounting to Rs. 2,69,270/-, during the period from April, 2014 to June, 2017.

**20.11** I find that the said assessee has contravened the provisions of Rule 4, Rule 6 and Rule 9 of the Cenvat Credit Rules, 2004 as they have wrongly availed and utilized Cenvat credit, as discussed hereinabove, without proving the admissibility as envisaged under Rule 9 of Cenvat Credit Rules, 2004, which is required to be demanded and recovered from the said assessee under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 by invoking the extended period of limitation along with interest under Section 75 of the Act read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004. The said assessee has suppressed the material facts from the department and the fact came to the notice of the department only during investigation and hence the assessee is also liable for penal action under Section 78(1) of the Act read with Rule 15(3) of the Cenvat Credit Rules, 2004. Rule 9(5) and 9(6) of Cenvat Credit Rules, 2004 stipulates that the burden of proof regarding the admissibility of Cenvat credit on input services shall lie upon the manufacturer or provider of output services, taking such credit.

**(c). Non filing or delayed filing of ST-3 returns and suppression of facts.**

**20.12** It has been alleged in the Show Cause Notice that the assessee was providing taxable services and were required to obtain the service tax registration to comply with the service tax provisions. However they did not obtain registration under service tax till 11.04.2017 and no service tax returns were filed by them till 12.04.2017. The returns for the period upto September, 2015 have been filed on 12.04.2017 or thereafter and no return for the period from October, 2015 to June 2017 have been filed yet, in contravention of the provisions of Rule 7 of the Service Tax Rules 1994 read with Section 70 (1) of the Finance Act 1994. Thus they have rendered themselves liable to pay late fees as prescribed under Rule 7C of Service Tax Rules, 1994.

**20.13** The assessee has submitted that the an application for the fresh Service Tax Number was made online and Service Tax Number was obtained on 11/04/2017, and the very next day ST-3 return till Sept-15 were filed and amount for the period of October-16 to June-17 was deposited by cheque in favour of "BOB Account Service Tax", which was cleared on 27/06/2017 and efforts for obtaining new user Id and Password to file the rest of the ST-3 return is being made and the same will be filed shortly.

**20.14** I find that the contention of the assessee itself approves the allegations made in the SCN. The assessee had not taken care to timely register under service tax and file service tax returns in time. The service tax returns have either been delayed filed or not filed at all till the date of hearing. This is a clear case of suppression of facts. The details of service tax returns delayed filed or not filed at all are as follows:-

F Y	Period	Return filed/Not filed	Delayed by Days
2014-15	Apr-Sept	Filed on 12.04.2017	880
2014-15	Oct-March	Filed on 12.04.2017	718
2015-16	Apr-Sept	Filed on 17.04.2017	540
2015-16	Oct-March	Not filed	
2016-17	Apr-Sept	Not filed	
2016-17	Oct-March	Not filed	
2017-18	Apr-Sept	Not filed	

**20.15** I find that the assessee has not complied with service tax registration when required and did not produce the required documents when called for by the central excise officers. Thus they have rendered themselves liable for penalty under Section 77 of the Finance Act, 1994. Further the service tax returns have either been delayed filed or not filed at all till the date of hearing and thus rendered themselves liable for late fees amounting to Rs. **1,40,000/-**, as detailed as follows:-

F Y	Period	Return filed/Not filed	Delayed by Days	Late fees (Rs.)
2014-15	Apr-Sept	Filed on 12.04.2017	880	20,000/
2014-15	Oct-March	Filed on 12.04.2017	718	20,000/
2015-16	Apr-Sept	Filed on 17.04.2017	540	20,000/
2015-16	Oct-March	Not filed		20,000/
2016-17	Apr-Sept	Not filed		20,000/
2016-17	Oct-March	Not filed		20,000/
2017-18	Apr-Sept	Not filed		20,000/

	<b>Total</b>		<b>1,40,000/</b>
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21. In view of discussion in the fore going paras, I find that all the above acts of suppression of facts, misstatement and contravention, omissions and commissions are on the part of the said assessee that they have wilfully suppressed the facts about the nature and value of services provided by them and due service tax liability was not properly assessed and paid. Therefore, the above said amounts of service tax is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 by invoking extended period of five years for the reasons stated herein foregoing paras.

22. Moreover in the present regime of liberalization, self-assessment and filing of ER/ST returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such non-payment of duty/service tax only during audit or preventive/other checks. Therefore, all these information has been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. In the case of Mahavir Plastics versus CCE Mumbai, [2010 (255) ELT 241 (Tri. – Mumbai)], it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In the case of Lalit Enterprises vs. CST Chennai, [2010 (17) STR 370 (Tri. – Chennai)] in it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73 (1) of Finance Act, 1994 to demand the service tax not paid along with interest under Section 75 of the Act *ibid*. All these acts of contravention of the provisions of the Finance Act, 1994, and Rules framed there under, are committed with intent to evade payment of service tax and constitute offence of the nature and type as described in Section 78 of the Finance Act, 1994.

23. In the case of Rathi Steel & Power Ltd. [2015(321) ELT 200 (All.)], The High court of Judicature at Allahabad held that:

*“32. We further find that under Rules, 2004, a burden is cast upon the manufacturer to ensure that Cenvat credit is correctly claimed by them and proper records are maintained in that regard.*

*33. The assessee, in response to the show cause notice had stated that there is no provision in Central Excise Law to disclose the details of the credit or to submit the duty paying documents, which in our opinion is false and an attempt to deliberately contravene the provisions of the Act, 1944*

and the rules made there under with an intent to evade the duty.

34. *In our opinion, the facts of the present case clearly suggest willful suppression of material facts by the assessee as well as contravention of the provisions of the Act and rules framed there under with an intent to evade the demand of duty as would be covered by Clauses IV and V of Section 11A(1) of the Act, 1944. Therefore, the invocation of the extended period of limitation in the facts of the present case is fully justified.”*

24. Similar view was expressed by the Hon’ble High Court of Judicature for Andhra Pradesh at Hyderabad in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. Versus Commissioner of Cus. & C. Ex., Tirupati [2012 (278) E.L.T. 167 (A.P.)] and held:

*“9. The contention of the learned counsel for the assessee that the extended period of limitation of five years for recovery of the duty under the proviso to Section 11A(1) of the Central Excise Act, 1944 would not be available to the Revenue in this case, as the penalty proposed to be levied was dropped, does not hold water. The extended period of five years for recovery of duties either levied or short-levied arises under various situations such as fraud, collusion, willful mis-statement, suppression of facts or contravention of the provisions of the Act or the Rules made there-under with intention to evade payment of duty. It is no doubt true that the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty [Union of India v. Rajasthan Spinning and Weaving Mills - (2009) 13 SCC 448 = 2009 (238) E.L.T.3 (S.C.)]. But merely because the ingredients for both are the same, it would not mean that in case penalty is not imposed, the duty also cannot be recovered. **Once the assessee availed credit under Rule 2(k) of the Rules of 2004 without entitlement it amounts to contravention of the rule with the intention of evading payment and the extended period of limitation would be available to the Revenue, notwithstanding the decision not to propose penalty upon the assessee.”***

25. The Hon’ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd – [2010 (260) E.L.T. 17 (S.C.)] – has held:

*“12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or*

*which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."*

26. I find that the said assessee has mis-stated their tax liability in ST-3 return and suppressed the taxable amount from the Revenue. They have shown the transactions in their financial records but have not shown the same in their ST3 returns before the same were detected by DGGI. Therefore, I hold that they have suppressed the material facts of services provided by them and did not disclose the full and true value of the same in their ST-3 returns filed by them, for the period from April, 2014 to September, 2015 and did not disclose any information for the period from October, 2015 to June, 2017. Accordingly, the proviso to Section 73(1) of the Act is applicable for invoking the extended period of 'five years' in this case. Therefore I hold that the service tax not paid is liable to be demanded and recovered from the assessee, under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts resulting in evasion of the payment of service tax. I further hold that the said assessee has not paid the service tax, as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. I find that the said assessee has not disclosed to the Revenue that they had availed Cenvat credit in contravention of Cenvat Credit Rules, 2004. This could only have been detected during the course of investigation. Thus they have suppressed the material facts resulting in evasion of the payment of service tax. Therefore I hold that the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for recovery of service tax short-paid on account of wrong availment of Cenvat credit, as discussed hereinabove along with interest under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules.

#### **Penalty under Section 78 of the Finance Act, 1994.**

27. 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 fulfil 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. These facts only came to the knowledge of the Department only when the Department initiated enquiry and this act of the said assessee is tantamount as wilful 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 wilful misstatement and suppression of facts from the department, with an intention to evade service tax payment. Therefore, the service tax not paid by the assessee is required to be demanded and recovered along with Penalty and interest at the applicable rate from them under the proviso to Section 73 (1) and Section 75 of the Finance Act, 1994 by invoking extended period of five years.

28. The above discussions amply demonstrate that the said assessee has suppressed the facts and contravened the provisions of the Finance Act, 1994 and the rules framed there-under, as discussed hereinabove 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 mala-fide intention is not relevant for imposing penalty and *mens-rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Therefore, I hold that the assessee would also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of rules framed there under.

29. As regards the imposition of penalty under Sec. 76 of the Finance Act, 1994 is concerned, I find that Section 78B of the Finance Act, 1994 stipulates that the provisions of the amended Section 76 and 78 will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 received the assent of the President. The relevant text of the same reads as under:

*“SECTION 78B. Transitory provisions. —*

(1) Where, in any case,—

(a) \_\_\_\_\_

(b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President,

then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable.”

30. The Finance Bill, 2015 received the assent of the President on 14.5.2015 and as such the amended provisions of the relevant sections will be applicable. The amended provision of sub-section (1) of Section 76 of the Finance Act, 1994 reads as under:

“(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten percent of the amount of such service tax:”

31. The above makes it amply clear that the penalty under Sec. 76 is impossible only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, that the non-payment/ short-payment of



service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.

**32.** I find that the said assessee was earlier registered under the Jurisdiction of the Commissioner of Service Tax, Ahmedabad. Consequent to the issue of the Notification No.12/2017-Central Excise (NT) to 14/2017-Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers and 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, the said assessee is now registered under the Jurisdiction of the Commissioner, Central Goods and Service Tax, Ahmedabad South. **Further**, the provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985, as repealed vide Section 174(1) of the Central Goods and Service Tax Act, 2017 (CGST Act) and the provisions of Chapter V of the Finance Act, 1994, as omitted vide Section 173 of the CGST Act, 2017, 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 the subject Show Cause Notice.

**33.** In view of my above findings, I pass the following order:

### **ORDER**

- (i)** I hereby hold that the receipt shown under the various Account Heads in Part II Receipt of Cash Account should be considered as taxable for charging of service tax in terms of Section 67 of the Finance Act, 1994;
- (ii)** I hereby confirm the demand of Service Tax amounting to **Rs. 51,89,348/- (Rupees Fifty-One Lakhs Eighty-Nine Thousand Three Hundred Forty-Eight only)** including Cess, as detailed hereinabove and order recovery of the same in terms of proviso to Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years;
- (iii)** I hereby disallow the Cenvat credit amounting to **Rs 2,69,270/- (Rupees Two Lakhs Sixty-Nine Thousand, Two hundred & Seventy only)** wrongly availed by the assessee, as detailed hereinabove and order recovery of the same in terms of proviso to Section 73 (1) of the Finance Act, 1994 read with

the provisions of Rule 14(1)(ii) of the Cenvat Rules, by invoking extended period of five years;

- (iv) Interest at applicable rate shall be charged and recovered on the amount of service tax liability mentioned at Sr. No. (ii) above in terms of the provisions of Section 75 of the Finance Act, 1994;
- (v) Interest at applicable rate shall be charged and recovered on the amount of service tax liability mentioned at Sr. No. (iii) above in terms of the provisions of Section 75 of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004;
- (vi) I hereby impose penalty of **Rs. 51,89,348/- (Rupees Fifty-One Lakhs Eighty-Nine Thousand Three Hundred Forty-Eight only)**, on the assessee 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 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;
- (vii) I hereby impose penalty of **Rs. 2,69,270/- (Rupees Two Lakhs Sixty-Nine Thousand, Two hundred & Seventy only)**, on the assessee in terms of the provisions of Section 78 of the Finance Act, 1994 read with the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004, 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;
- (viii) I hereby hold that Late fees of **Rs. 1,40,000/- (Rs. One Lakh and Forty Thousands Only)** be charged and recovered from them in terms of the provisions of Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for non filing/late filing of Service Tax Returns for the period under question;
- (ix) I impose a penalty of **Rs. 10,000/- (Rs. Ten Thousand only)** on the assessee in terms of the provisions of Section 77(1) of the Finance Act, 1994 for failure to discharge the onus of self-assessment of service tax; and

- (x) I do not impose any penalty on the assessee in terms of the provisions of Section 76 of the Finance Act 1994;

  
16/3/20

**(MOHIT AGRAWAL)**  
**Additional Commissioner of CGST**  
**Ahmedabad South**

F. No. STC/04-72/PostMaster/O&A/2019-20

Date: - 16.03.2020

**BY REGD POST A.D.**

To,

**The Senior Post Master Navrangpura,**  
Navrangpura Head Post Office, Ground Floor,  
Navrangpura, Ahmedabad, Gujarat 380 006,

Copy to: -

- (1) The Principal Commissioner, CGST, Ahmedabad South.
- (2) The Joint Director, Ahmedabad Zonal Unit, DGGI.
- (3) The Assistant/Deputy Commissioner (RRA), Central GST, Ahmedabad South.
- (4) The Assistant/Deputy Commissioner, Central GST, Division-VI, Ahmedabad South.
- (5) The Superintendent, Central GST, Range-IV, Division-VI, Ahmedabad South.
- ✓(6) The Assistant Commissioner (System), Central GST, Ahmedabad South.
- (7) Guard File.

