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. STC/04-34/Khodal/O&A/2019-20

आदेश की तारीख: Date of Order : 25.10.2019

जारी करने की तारीख: Date of Issue : 28.10.2019

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

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मूल आदेश सं./Order-In-Original No.:10/CX-I/Ahmd/ADC/MA/2019

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

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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 प्रारुप 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 । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

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

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

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

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

संदर्भ/Reference :कारण बताओ सूचना फा.सं. F.No. STC/04-167/Prev/Gr-VI/CERAHM/16-17/Khodal dated 02.08.2019 issued to 4. M/s. Khodal Corporation Pvt Ltd, A/3, Sarita Darshan, Opp Jayhind Press, Mithakali Underpass, Ashram Road, Ahmedabad.

Brief facts of the case

M/s. Khodal Corporation Private Limited situated at A/3, Sarita Darshan, Opposite Jayhind Press, Mithakhali Underpass, Ashram Road, Ahmedabad-380009 (hereinafter referred to as "the said assessee") is a Private Limited Company engaged in providing services for Designing, Construction, Installation, Operation and maintenance of Toy Train. 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 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 falling under the Jurisdiction of the Ahmedabad South Commissionerate, Central Goods and Service Tax.

2.1 Based on an information that the said assessee was not registered in service tax and had not paid any service tax towards the services provided by them, an inspection was carried out on 09.07.2018 at the premises of the said assessee situated at Corporation Private Limited, A/3, Sarita Darshan, Opposite Jayhind Press, Mithakhali Underpass, Ashram Road, Ahmedabad-380009 under Section 67(1) of CGST Act 2017 read with Rule 5A of Service Tax Rules 1994 to check the possible evasion of service tax.

2.2 During the visit, the records of the assessee were examined and a statement of Hitendra Shah, Director of the said assessee was recorded on 09.07.2018 under Section 70 of CGST Act 2017 read with Section 14 of the Central Excise Act, 1994 as made applicable for Service Tax matters as per Section 83 of the Finance Act, 1994. In his statement, Shri Hitendra Shah interalia stated that they were engaged in providing services for designing, construction, installation, operation and maintenance of Toy Train at Sayajibag, Vadodara; that the ticket price for adults was Rs. 40/-, for children between 4-12 years of age was Rs. 20/- and for educational tour managed by school was Rs. 15/-; that they had not collected or paid any service tax in respect of the said activity; that they had not obtained service tax and central excise registration. During the course of recording his statement, he furnished the year-wise sales summary as under:

Period	Sales turnover for service tax (in Rs.)	Sales tumover for goods (in Rs.)
2013-14	13227918/-	5164725/-
2014-15	25619073/-	6984623/-
2015-16	29007029/-	10541528/-
2016-17	25170681/-	12514310/-
April to June 17	5842345/-	2027051/-

2.3 During the inspection on 09.07.2018, the said assessee submitted the following documents under their letter dated 09.07.2018:

i) Memorandum of Understanding

ii) Audited balance sheet along with ITR for the years 2013-14 to 2016-17

iii) Daily sales reports for the period 1.7.2017 to 31.7.2017

2.4 On scrutiny of records of the assessee it was observed that they had provided taxable services for the period from June-2015 to Jun-2017 without service tax registration. In this regard a statement of Shri Hitendra Shah, Director of the said assessee was recorded on 01.10.2018 under Section 70 of CGST Act 2017 read with Section 14 of the Central Excise Act, 1994 as made applicable for Service Tax matters as per Section 83 of the Finance Act, 1994 wherein he interalia stated that the services of amusement facility is falling under the negative list and they had no knowledge that the same had been omitted from the negative list; that he admitted the non-payment of service tax and agreed to pay the service tax alongwith interest. He furnished the revenue from amusement services as under:

Sr No	Period	Revenue from Service (in Rs.)
1	June 2015 to March 2016	25207109/-
2	April 16 to March 17	25170681/-
3	April 17	1502480/-
4	May 17	2749235/-
5	June 17	1590630/-
	TOTAL	56220135/-

Further, during the course of recording his statement, Shri Hitendra Shah, Director of the assessee admitted his service tax liability to the tune of Rs. 71,40,787/- for the period from June 2015 to June 2017 at answer to Question No. 10 as detailed under:

Service Tax calculation sheet of M/s Khodal Corporation Private Limited Ahmedabad from June 2015 to June 2017						
Sr No	Period	Value of service with service tax as per B/s	Assessable Value	Rate of service tax	Service tax payable	Outstanding S. Tax
1	June 2015 to March 16	25207109	22111499	14%	3095610	3095610
2	April 16 to March 17	25170681	21887548	15%	3283132	3283132
3	April 2017	1502480	1306504	15%	195976	195976
4	May 2017	2749235	2390639	15%	358596	358596
5	June 2017	1590630	1383156	15%	207473	207473
	TOTAL	**56220135**	**49079346**		**7140787**	**7140787**

3. The term 'amusement facility' has been defined at Section 65B(9) of the Finance Act, 1994 as under: –

> *"A facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided."*

Admission to an amusement facility was covered under the negative list by virtue of clause (j) of Sec. 66D which reads as under:

> *"Admission to entertainment event or access to amusement facility shall not be considered as Services"*

However, sub-section 9 of Section 65B of the Finance Act, 1994 and clause (j) of Sec. 66D of the Finance Act, 1994 were omitted vide Sections 107 and 109 of the Finance Act, 2015 and such omission was made effective from 1.6.2015 by virtue of Notn. No. 14/2015 (ST). Thus, the activity of admission to entertainment event or access to amusement facility became taxable w.e.f. 1.6.2015

3.1 The constitutional validity of service tax on admission to amusement facilities was examined by the Hon'ble Kerala High Court in case of M/s Kanjirappilly Amusement Park and Hotels P. Ltd. Vs UOI, CEx and State of Kerala (Kerala High Court), Writ Petition No. - 18328/2015 and it was held that there is no overlapping of the Union Parliament on the power conferred on the State, in fact or in law, since the respective legislatures tax two different aspects. Thus, the constitutional validity of levy of service tax on the activity of admission to amusement facility has been held good by the Hon'ble High Court.

4 Whereas on scrutiny of the documents furnished by the said assessee revealed that the income from Sales of services for June-2015 to March-2016 was to the tune of Rs. 2,52,07,109/- and same has been confirmed by Shri Hitendra Shah in his statement. Further, the said assessee has also submitted the trial balance sheet for June-2015 to March-2016 in which Income from services has been shown as Rs. 1,98,25,706/-. The copy of extract of balance sheet of F.Y. 2015-16 & Trial balance sheet for Jun-2015 to July-2016 and Income from Sales of services ledger for April-2015 to Jun-2015 have been reproduced at para 3.4 of the impugned show cause notice.

4.1 The said assessee has also submitted Audited balance Sheet for 2016-17 in which revenue from Sales of services shown as Rs. 2,51,70,681/-. The copy of extract of balance sheet of F.Y. 2016-17 has been reproduced at para 3.5 of the impugned show cause notice. Further, the said assessee has submitted Trial balance sheet for April-2017 to Jun-2017 in which revenue from Sales of services shown as Rs. 91,03,480/-. Further, the said assessee has submitted the ledger of revenue from sales of services from April-2017 to Jun-2017 in which the total revenue from sales of service shown as Rs. 58,42,345/-. The copy of extract of trial balance sheet of for

April-2017 to Jun-2017 and Income from Sales of services ledger for April-2017 to Jun-2017 ha[illegible] been reproduced at para 3.5 of the impugned show cause notice.

4.2 From the above, it appeared that the said assessee Corporation has submitted different income data for the period June-2015 to March-2015 and April-2017 to Jun-2017, hence the service tax liability has been calculated on the higher side. The calculation of service tax liability from Jun-2015 to Jun-2017 on taxable services provided is as under:-

Sr. No.	Period	Sales of Service	Rate of Service tax	Service tax payable
1	June-2015 to March-2016	25207109	14%	3528995
2	2016-17	25170681	15%	3775602
3	April-2017 to Jun-2017	9103480	15%	1365522
Total		59481270		86,70,119

4.3 Therefore, it appears that the assessee has not paid service tax of Rs.86,70,119/- for the period from Jun-2015 to Jun-2017 on the taxable services provided by them and the same is required to be recovered from them under Section 73 of Finance Act 1994 along with Interest at applicable rate.

4.4 In view of the above, it appeared that the said assessee has provided services under "Amusement Facility" and had failed to assess their service tax liability towards rendering of service, failed to pay required service tax and also failed to file correct service tax returns for the taxable income received by them;

5 Further, it was observed that the said assessee had received the security services for the period from April-2014 to Jun-2017 and shown the expenses in financial documents. Therefore, the said assessee was liable to pay the service tax under the reverse charge mechanism in view of the provisions of Sec. 68(2) of the Finance Act, 1994 read with Rule 2(d) of the Service Tax Rules, 1994 and Notn. No. 30/2012 ST as amended. Scrutiny of the expense ledgers submitted by the said assessee revealed that they had not paid service tax under RCM on Security Services received by them as calculated under:-

Calculation of Service Tax on Security Services under (RCM)

Period	**Security Service Expense as per Ledger**	**Taxable Value as per Provision of RCM "75% (100% w.e.f 1.4.15)"**	**Service Tax Payable**
2014-15	323841	242881	30020
2015-16	426380	426380	59693
2016-17	455552	455552	68333

2017-18 (April to Jun)	97248	97248	14587
Total	**1303021**	**1222061**	**172633**

5.1 The copy of ledgers titled 'Watchman Security Salary' have been reproduced at para 3.13 of the impugned show cause notice.

6 Further it was observed that the assessee had failed to file the periodical service tax returns in terms of the provisions of Section 70(1) of the finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. Thus, it appeared that the assessee was liable to pay late fees in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 as calculated under:

S.NO.	F.Y.	Time period	Late fee
(i)	2014-15	April to Sep	20000
(ii)	2015-16	Oct to March	20000
(iii)	2015-16	April to Sept.	20000
(iv)	2015-16	Oct to March	20000
(v)	2016-17	April to Sept.	20000
(vi)	2016-17	Oct to March	20000
(vii)	2017-18	April to June	20000
Total			1,40,000

7 From the foregoing discussions, it appeared that the said assessee had contravened the following provisions of law:

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

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

(c) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in as much as they have failed to discharge Service Tax liability of Rs. 86,70,119/- in respect of the taxable service provided by them, for the period from F.Y. June-2015 to Jun-2017, engaged in providing taxable services which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 2012, to the credit of the Government within the statutory time-limit prescribed at the relevant time-period. As per Rule 6 of the Service tax Rules, 1994, the service tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service.

(d) Section 69 of the finance Act, 1994, in as much as they have provided/received taxable service without having service tax registration from April-2014 to June-2017. Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, in as much as they have failed to obtain registration of the service tax. as per the provision of Section 69 of the Finance Act, 1994

(e) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, in as much as they have failed to self-assess the Service Tax and furnish the return for the period from April-2014 to June-2017 within the stipulated time limit. As per the provision of Section 70, 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 in such manner and at such frequency. Rule 7 of the Service tax Rules 1994 stipulates that noticee shall submit their service tax returns in the form of ST-3 within the prescribed time.

(f) Rule 2(d) of the Service Tax Rules, 1994 read with Notn. No. 30/2012 ST as amended by Notn. No. 45/2012 ST in as much as they failed to discharge their service tax liability under the reverse charge mechanism in respect of such Security Expenses.

Thus, it appeared that the assessee had rendered themselves liable to penalty in terms of the provisions of Sec. 77 and 78 of the Finance Act, 1994. Further, it appeared that the provisions of the repealed Central Excise Act, 1944 and the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017 and therefore the provisions of the said repealed/amended Acts and Rules made there under are enforceable for the purpose of demand of duty, interest, etc. and imposition of penalty under the impugned show cause notice.

8. It appeared that M/s. Khodal Corporation has not paid service tax as per their financial records it was detected during investigation initiated by officers on 09.07.2018 that they have not paid service tax amounting to Rs. 86,70,119/- for the period from June-2015 to Jun-2017 on taxable services provided by them and Service tax Rs. 1,72,633/- under RCM on taxable services "Security Services" received by them. Further, it appeared that they have done so with an intent to evade the payment of Service Tax for the services provided/Received by them as they have never informed the Department and the evasion /non-payment of service tax by the assessee came to the notice only during the investigation initiated on 09.07.2018.

8.2 Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the service tax on the assessee. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:

"assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of

assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed."

In the instant case the assessee has failed to properly assess the service tax liability and also failed to reflect the correct information in the ST-3 returns. Thus, they have resorted to suppression of material facts by not reflecting the correct taxable income. Accordingly, it appeared that the service tax as quantified hereinabove 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.

8.3 In view of discussion in the fore going paras, it appeared 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, nature and value of service provided by them by not assessing and paying due service tax liability, therefore, the above said amounts of service tax of Rs. 86,70,119/- (nonpayment of service tax for June-2015 to Jun-2017 on Income from taxable service provided by them), Rs. 1,72,633/- (Nonpayment of service tax under RCM for April-2014 to Jun-2017 on service received by them) and Late fee amount of Rs. 1,40,000/- (Non filing of service tax returns) for the above period is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 read with Rule 14 of Cenvat Credit Rules 2004 by invoking extended period of five years for the reasons stated herein foregoing paras. During the course of investigation, the assessee had paid service tax amounting to Rs. 17,00,100/- vide DRC-3 in token of acceptance of their above admitted service tax liability.

8.4 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, it appeared that 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, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai, 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, appear to have been committed with intent to evade payment of service tax and constitute offence of the nature and type as described in Section 76 &78 of the Finance Act, 1994.

In the case of Rathi Steel & Power Ltd. -2015(321) ELT200(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 wilful 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."*

9.1 Similar view was expressed by the Hon'ble High Court of Judicature for Andhra Pradesh at Hyderabad in the case of SreeRayalaseema Hi-Strength Hypo Ltd. Versus Commissioner of Cus. & C. Ex., Tirupati - 2012 (278) E.L.T. 167 (A.P.) 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, wilfulmis-statement, suppression of facts or contravention of the provisions of the Act or the Rules made thereunder 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 purpose penalty upon the assessee."***

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."

8.5 In the self-assessment era, the Service Providers are required to be proactive in declaring their activities to the department and getting themselves registered and fulfill their tax obligations. Service Tax being an indirect tax requires the service provider only to collect the same from the service receiver and remit it to the Government. The Government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by them for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider. In the instant case the assessee has provided taxable services without having the Service Tax Registration. 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 willful misstatement and suppressing the facts with an intention to evade service tax payment. The assessee is also liable for penal action as per Section 78 of the Finance Act, 1994 for making willful misstatement and suppression of facts from the department, with an intention to evade service tax payment. Therefore, the service tax not paid by M/s Khodal Corporation 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.

8.6 It further appeared that Sh.Hitendra Shah, Director of the said assessee is the person responsible for business activities of the company relating to services provided and liability to pay service tax and for the act of omission and commission by their company which resulted in evasion and non-payment of service tax as explained in above paras. For the above acts of contravention of various provisions of the Finance Act, 1994 and rules made there under, it appeared that Shri Hitendra Shah, Director of The said assessee Corporation is liable for penalty under Section 78A of the Finance Act, 1994.

9. In view of the above, SCN No. STC/04-167/Prev/Gr.-VI/CERAHM/16-17/Khodal dated 2.8.2019 was issued wherein the said assessee were called upon to show cause as to why:

(i) The Service Tax amount of **Rs. 86,70,119/-** (Eighty Six thousand seventy thousand one hundred nineteen only) calculated on the basis of taxable value shown in Financial records, findings comes during investigation for the period June-2015 to Jun-2017 and for the taxable services, which are not falling under negative list of services under Section 66D of the Finance Act, 2012 **should not be demanded and recovered from them under the proviso of section 73(1) of Finance Act, 1994** read with section 68 of the Finance Act, 1994, as amended, by invoking extended period of five year. The service tax liability of Rs. 17,00,100/- paid by The said assessee Corporation should not be appropriated.

(ii) Service Tax not paid on account of their liability under RCM as recipient of services (Security Expense) worked out as Rs. 1,72,633/- (One lakh thirty two thousand six hundred thirty three only) for April-2014 to Jun-2017 of Service Tax on account of Reverse Charge Mechanism liability under Section 68(2) of Finance Act, 1994.

(iii) Interest at the prescribed rate should not be charged on the service tax liability mentioned in (i) & (ii) above, under Section 75 of the Finance Act, 1994 as amended from time to time;

(iv) Penalty under Section 78(1) of the Finance Act, 1994 should not be imposed on them for suppressing and not disclosing the income from the said taxable service provided by them before the department with an intention to evade payment of service tax as mentioned in (i) and (ii).

(v) Late fee amounting to Rs. 1,40,000/- (Rupees One lakh forty thousand Only) should not be imposed upon them under Section 70 of Finance Act, 1994 read with Rule 7 as they have failed to file ST-3 Returns, for the period from Jun-2015 to June-2017.

(vi) Penalty under Section 77 of the Finance Act, 1994 should not be imposed on them.

9.1 Sh. Hitendra Shah, Director of the said assessee was also called upon to show cause as to why Personal penalty should not be imposed upon him under Section 78A of the Finance Act, 1994.

Written submissions of the assessee

10. The assessee filed their written submissions under their letter Ref.: KCPL/Service Tax/2019-20 dated 26.8.2019 wherein they made the following submissions:

"On 09.07.2018 the officers from service tax department had visited our business place and recorded the statement of Mr Hitendra Shah Director of the company, in details and during the process the question about the applicability of service tax and charges of service tax from customer was discuss, and at the same time Mr Hitendra Shah, director of the company replied in detail that they were not knowing that the service tax is applicable from 01.06.2015 onwards and also clarify that the no extra service tax has been collected from the customer.

The summons was issued by the department on 08/08/2018 & 26/09/2018 to the company. Mr Hitendra Shah the director of the company have attended the office of the service tax on various dates and also the statement was recorded on 01/10/2018 by the authority which include the calculation of the liability of the service tax. Mr Hitendra Shah has admitted in a statement that we were agreed for the payment and discuss for the sometime for the payment, during the statement we have high light the matter of payment of custom duty paid as we had import the capital goods and paid the custom for which we are eligible for cenvat credit, which we have never asked for refund or set off against service tax. As we were not in the knowledge for the applicability of the service tax & cenvat credit, we had not claimed cenvat credit & same time not paid service tax during the year under consideration. The amount of the custom cenvat credit is Rs. 4376050=00 not claimed.

At the time of verification of the liability we had also remind the officer about the first 10.00.000 receipt of sales is not chargeable to tax hence first 10 Lacs receipt should be deducted from the sales. More over we have not collected any service tax above tickets rates. Hence the charges collected from the customer were without the service tax hence the same to be treated with the service tax and liability to set accordingly. (Receipt will be treated as gross receipt including service tax)

After admitted our liabilities till date we had already paid the service tax about Rs. 31.00.200/- and the rest amount will be paid in due course.

Submission for the show cause:

We are in receipt of the Show cause notice on 09.08.2019 regarding the liability of service tax about Rs 86.70 Lakhs, the non return filling penalty of Rs 1.40 Lakhs and reverse charges of 1.72 Lakhs.

Sir we are disagreed with figures so mention in the show cause notice:

PAYMENT OF SERVICE TAX OF RS 86,70,119=00 LAKHS:

1. The year in which the liability for the payment of tax arise i.e. from June 15 the first 10.00.000 receipt was not chargeable to tax, hence the calculation for the June 15 to march 2016 required to modification for the liability: page 13 para 2.10

SR No	Period	Value of service with service tax	Assessable value	Rate of tax	Tax	Service Tax Payable
1	June 15 to March 16	25207109	22111499	14	3095610	3095610

The correct calculation as under

SR No	Period	Value of service with service tax	Exempted First 10.00.000	Gross Receipt	Assessable value	Rate of tax	Service Tax	Service Tax Payable Rs
1	June 15 to March 16	25207109	10.00.000	24207109	21234306	14	2972802	2972802

Please look in to the matter as above and reduce the of amount of liabilities by Rs 122808/-

As per the liability mention on page 13 Para 2.10 will be reduce by Rs 122808/-

2. Sir the calculation differ with the calculation made by the officer earlier, page 13 para 2.10 reflected that the liability of Rs. 71.40 Lakhs and the present liability as per notice reflected Rs. 86.70 on page 26 para 3.6

And in the details of calculation the figures so calculated without considering the collection includes the service tax hence the re calculation of the liability is required.

I e Charged ticket receipt Rs. 100 (as per our book) @ 14% service tax applicable the bifurcation of receipt will be calculated as Ticket charge Rs. 87.72 plus 14% service tax Rs. 12.28 hence all receipt should be treated as gross receipt including service tax.

And as per the calculation of the show cause notice Ticket charged receipt Rs. 100.00 and service tax @ 14% is on actual receipt Rs. 14.00, In this case total receipt should be Rs. 114.00 where we have collected only Rs. 100.00 only.

Hence the additional liability as per Rs. 100.00 receipt was excess by Rs 1.72 that please note and re calculate the liability of tax as under:

Sr no	Period	Value of services	Less First 1000000	Amount to charge tax	Rate	Assessable value	Service Tax Payable
1	June 15 to March 16	25207109	1000000	24207109	14	21234306	2972802
2	April 16 to March 17	25170681	0	25170681	15	21887548	3283132
3	April 17 to June 17	9103480	0	9103480	15	7916070	1187411
	Total Rs.	**56220135**	**1000000**	**55220135**			**7443345**

The actual liability will be Rs. 7443345/-Out of which we have already paid Rs 31.00.200/= vide various DRC - 3

3. **The chargeability of reverse charges on supply of manpower of security services:**

Sir, if we have taken any services about to have taken services of manpower of security than the applicability of the reveres charges is applicable. But any appointment as an employee, the same is not applicable for the reverse charges towards supply of manpower.

In our case we had made appointment of various person as a security guard on our site as well as at our office, with fixed salary, please note that it is further to clarify no agency for such requirement or providing manpower have appointment for the security services.

At the time of the discussion we have produce the ledger for the same which reflect the WATCHMAN SECURITY SALARY FOR ALL THE THREE YEARS attached in the show cause notice page 28 and 29.

When any salary paid to the employees for the service render is not attract the service tax in law and only state government can levy the professional tax.

Hence the addition in the liabilities of Rs 1,72,633/- for the reverse charges for the security salary to be deleted.

4. PENALTY FOR THE NON FILLING OF REURN:

As discuss in the para we are not registered with the department, how to file the return is the main question, there is no such provision that the without registration can filed the return as discuss in para of 3.16 of page 30. As per para 3.16 as mention late filling of fees, as we are not registered we are not oblige to file the ST3.

Before charging the penalty the intention of the defaulter to be tested the willful defaulter to be charged, our intention is not to hide anything from the department as no knowledge of the service tax law and procedure we have not obtain the registration and the obligation will start only after the obtaining registration.

Further to humble request that the intention of the service provider is not to avoid the tax so payable but due to lake of the knowledge of the service provider the same is not collected and due to this reason not paid and the registration was not obtain for the service tax, while during the G S T regime the same was taxable and hence the registration of the G S T was obtain and the necessary tax is regularly paid by us, and hence we request , not to charge any interest and penalty as per the section 75 and 78(1) mention in the show cause notice by Honorable Sir."

Record of Personal Hearing

11. Personal hearing in the matter was held on 21.10.2019 wherein Shri Hitendra Shah, Director of the assessee appeared and he reiterated their submissions made under letter dated 26.8.2019. He further stated that they had not collected additional service tax and therefore, gross amount should be inclusive of service tax. He further submitted that basic exemption of Rs. 10 lakhs should be available to them. He further submitted that they were under the impression that they were not liable to service tax and therefore a lenient view be taken and no penalty imposed upon them.

Discussion and Finding

12. I have carefully gone through the SCN, relevant case records and the assessee's submissions both, in written and in person.

13. The twofold issues for consideration before me are 1) Liability of service tax on receipt of ticket sale for admission to amusement facility and 2) Liability of service tax on the Security services under the reverse charge mechanism. I proceed to examine both the issues as under:

14. Liability of service tax on receipt of ticket sale for admission to amusement facility

14.1 The activity undertaken by the assessee is that of Designing, Construction, Installation, Operation and Maintenance of Toy Train as stated by Shri Hitendra Shah, Director of the assessee under his statements dated 6.7.2018 and 1.10.2018. The financial statements of the said assessee also reveal that they charge some amount towards admission to the ride of Toy Train. Thus, it is observed that the said assessee are engaged in the activity of running the Toy Train for others for a consideration in the form of Admission Tickets. Such activity is covered under the ambit of the term 'service' as defined at Sec. 65B(44) of the Finance Act, 1994 which reads as under:

> *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*
> *(a) an activity which constitutes merely,—*
> *(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
> *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or*
> *(iii) a transaction in money or actionable claim;*
> *(b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
> *(c) fees taken in any Court or tribunal established under any law for the time being in force.*

14.2 Prior to 1.6.2015, such activity of admission to Amusement Facility for a consideration was covered under the Negative List as specified under clause (j) of Sec. 66D of the Finance Act, 1994. However, sub-section 9 of Section 65B of the Finance Act, 1994 and clause (j) of Sec. 66D of the Finance Act, 1994 were omitted vide Sections 107 and 109 of the Finance Act, 2015 and such omission was made effective from 1.6.2015 by virtue of Notn. No. 14/2015 ST. Thus, the activity of admission to entertainment event or access to amusement facility became taxable w.e.f. 1.6.2015. The said assessee have not disputed the facts about the nature of activity being undertaken by them and have not raised any submissions to the effect that the activity undertaken by them was not covered under the ambit of 'service'. Thus, I find that the assessee have rendered services which have become taxable w.e.f. 1.6.2015 by virtue of omission of clause (j) of Section 66D of the Finance Act, 1994.

14.3 Further, I find that the constitutional validity of service tax on admission to amusement facilities was examined by the Hon'ble Kerala High Court in case of M/s Kanjirappilly

Amusement Park and Hotels P. Ltd. Vs UOI, CEx and State of Kerala (Kerala High Court), Writ Petition No. - 18328/2015 and it was held that there is no overlapping of the Union Parliament on the power conferred on the State, in fact or in law, since the respective legislatures tax two different aspects. Thus, the constitutional validity of levy of service tax on the activity of admission to amusement facility has been held good by the Hon'ble High Court.

14.4 It is also on record that Shri Hitendra Shah, Director of the assessee has admitted the service tax liability during the course of recording his statement on 1.10.2018, the details of which have been tabulated at para 2.4 hereinabove. Further, the assessee have also admitted their service tax liability to the tune of Rs. 74,43,345/- in their reply dated 26.8.2019 and have stated that they have already paid Rs. 31,00,200/- vide DRC-3. Moreover, I find that the assessee have also accepted the fact that the activity undertaken by them was liable to service tax and in token of such acceptance they have paid service tax totally amounting to Rs. 30,00,200/- (Rs. 17,00,100/- during the course of investigation and balance after issue of show cause notice) as evident from their Electronic Liability Ledger of which the relevant details are as under:

Sr. No	Date	Reference No.	Ledger used for discharging liability	Relevant Demand ID/ Liability ID	Description	Amount (Rs.)
1	27.7.18	DC2407180415272	Cash	IP2407180000414	Voluntary payment	100
2	27.7.18	DC2407180415536	Cash	IP2407180000415	Voluntary payment	100
3	30.7.18	DC2407180427811	Cash	IP2407180000457	Voluntary payment	300000
4	31.8.18	DC2408180373587	Cash	IP2408180000555	Voluntary payment	500000
5	31.12.18	DC2412180404279	Cash	IP2412180001288	Voluntary payment	500000
6	18.3.19	DC2403190187736	Cash	IP2403190000768	Voluntary payment	200000
7	10.5.19	DC2405190055076	Cash	IP2405190000695	Voluntary payment	200000
8	4.6.19	DC2406190014517	Cash	IP2406190000388	Voluntary payment	500000
9	8.7.19	DC2407190038219	Cash	IP2407190001166	Voluntary payment	800000
TOTAL						3000200

14.5 The said assessee have submitted that that they were eligible for the exemption for the first receipt of Rs. 10 lakhs for the year 2015-16. In this regard, I find that Notn. No. 6/2005 ST as amended vide Notn. No.8/2008 ST grants an exemption upto the taxable value of Rs. 10 lakhs and the relevant text of the said notification is as under:

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, on being satisfied that it is necessary in the public interest

so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66 of the said Finance Act

It is a well settled principle of law that the benefit of exemption notification is to be granted subject to the fulfillment of the conditions therein while computing the tax/ duty demand. In the instant case, I find that one of the conditions for grant of such exemption to the tune of Rs. 10 lakhs is that the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees ten lakhs in the preceding financial year. In the instant case, it is observed that the services rendered by the said assessee became taxable w.e.f. 1.5.2015 and as such the aggregate value of taxable services in the previous year is Nil.

14.6 As regards the other conditions laid down under Notn. No. 6/2005 ST as amended are concerned, I find that the exemption is subject to fulfillment of the following conditions:

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails exemption from payment of service tax under this notification;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees four lakhs in the preceding financial year.

In the instant case, I find that the said assessee was not registered with the service tax department and as such the question of taking cenvat credit on inputs, input services or capital goods does not arise. Further, the entire income from the P & L Account of the said service provider has been considered for the computation of service tax and as such all the income whether from a single premise or multiple premises is considered. Thus, I find that all the conditions of Notn.No. 6/2005 ST stand fulfilled in the instant case. Further, I find that the show cause notice nowhere alleges that the benefit of exemption under Notn. No. 6/2005 ST as amended would not be admissible to the said assesse for non-fulfillment of the conditions specified therein. Thus, I find force in the argument of the assessee to the effect that while computing the service tax liability, the exemption under Notn. No. 6/2005 ST as amended should have been considered for the year 2015-16 and accordingly, I hold that they are eligible for the exemption upto the aggregate value of services of Rs. 10 lakhs in the year 2015-16.

14.7 Another argument put forth by the assessee is that they have not collected any service tax from their customers and as such the receipts should be considered as cum-tax-value. In this regard, I find that Section 67 of the Finance Act, 1994 stipulates as under:

Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

In the instant case, I find that the financial records of the service provide indicate that no additional value other than that shown in the financials/ tickets has been collected from the customers. Thus, the gross value collected by the said assessee is inclusive of the service tax payable.

14.8 In this regard, I find that the Tribunal in the case of M/s Advantage Media Consultant reported at 2008 (10) STR 449 (T) has held as under:

"Service tax is an indirect tax. As per this system of taxation, tax borne by the consumer of goods/services is collected by the assessee (manufacturer/service provider) and remitted to the Government. When the amount is collected for the provision of services, the total compensation received should be treated as

inclusive of service tax due to be paid by the ultimate customer of the services unless service tax is also paid by the customer separately. So considered, when no tax is collected separately, the gross amount has to be adopted to quantify the tax liability treating it as value of taxable service plus service tax payable. We find that this principle has been legislated in the following terms with effect from 18-4-2006 in Section 67(2) of the Finance Act, 1994 as amended"

The aforesaid judgment of the Tribunal has been upheld by the Supreme Court as reported at 2009 (14) STR J 49 (SC)

14.9 The same analogy has also been held true in the case of M/s Vaishali Developers & Builders reported at 2017 (47) STR 300 (T) wherein it has been observed as under:

"As regards the quantification of service tax, it is now well settled law that the entire consideration received by the service provider has to be treated as cum duty and the benefit of the same has to be extended. Accordingly, we set aside the impugned order and direct the lower authorities to recalculate service tax amount, after extending the cum-tax benefit to the assessee."

In view of the above, I find that the entire consideration received by the service provider is to be treated as cum-tax-value and the service tax chargeable is to be calculated accordingly.

14.10 Thus, I re-calculate the service tax liabilities in view of my findings at paras 14.6 and 14.9 as under:

Year	Gross Value as per SCN	Exemption under Notn. No. 6/2005 ST	Gross value inclusive of service tax	Taxable value (giving benefit of cum-tax-value)	Rate of ST	ST payable
June 15 to March 16	25207109	1000000	24207109	21234306	14	2972803
2016-17	25170681	0	25170681	21887549	15	3283132
April 17 to June 17	9103480	0	9103480	7916070	15	1187411
TOTAL	**59481270**	**1000000**	**58481270**	**51037925**		**7443346**

In view of the above, I find that the assessee have failed to discharge their service tax liability to the tune of Rs. 74,43,346/- on the services provided by them and the same is required to be demanded and recovered from.

15. Liability of service tax on the Security services under the reverse charge mechanism

15.1 It has been alleged in the show cause notice that the assessee have availed security services and not discharged their service tax liability under the reverse charge mechanism. In this regard, the assessee have submitted that they had not hired a security agency but had appointed

persons as security guard at their site on fixed salary basis. Thus, it has been contended that service tax is not leviable under the reverse charge mechanism. However, I find that the assessee have not furnished any evidence to indicate that that the security guards as claimed by them were on their pay-rolls and had been employed on salary basis. In absence of such evidence, the contention cannot be taken at its face value. Further, the ledger titled 'Watchman Security Salary' for the year 2014-15 reveals that payments have been made to the following persons:

Sr No	Name of the security personnel	Months for which payments made
1	Satishchandra S Pandey	April 14, Aug. 14, Nov. 14 and Jan 15
2	Sima Devi Dwivedi	May 14
3	Pradeep Kumar Singh	June 14 and July 14
4	Ajaykumar Dwivedi	Sept. 14 and Feb. 15
5	Natubhai S Rohit	Oct 14
6	Chandra Kishor Dwivedi	Dec. 14

It is highly improbable that the assessee has employed different persons as Watchman for different months. Thus, I find that the argument put forth by the assessee is not maintainable.

15.2 In terms of the powers conferred under Sec. 68(2), the Government has issued Notn. No. 30/2012 ST dated 20.6.2012 as amended, wherein the class of services under the reverse charge mechanism, the person liable to pay service tax and the extent of service tax payable by such person, has been specified. For ease of reference, the said notification is reproduced hereunder:

> *"In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—*
>
> ***I. The taxable services,—***
>
> *A)(i)* _ _ _ _ _ _ _
>
> *(ii)* _ _ _ _ _ _

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose ***or security services*** *or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory*

The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified at (I) to Notn. No. 30/2012 ST as amended has been specified at the Table at II of the said notification and the relevant portion of the same has been reproduced as under:

TABLE

Sl. No.	**Description of a service**	**Percentage of service tax payable by the person providing service**	**Percentage of service tax payable by the person receiving the service**
8	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services	Nil	75% (for 2014-15) 100% w.e.f. 1.4.2015

15.3 The person liable to pay service tax under the reverse mechanism charge has also been stipulated under Rule 2(d) of the Service Tax Rules, 1994 which reads as under:

"2(d) "person liable for paying service tax", -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) _ _ _ _ _ _

(B) _ _ _ _ _ _

(F) *in relation to services provided or agreed to be provided by way of :-*

(a) _ _ _ _ _; or
(b) supply of manpower for any purpose or [security service]; or
(c) _ _ _ _ _

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

15.4 In the instant case, the service recipient is a Private Limited company registered with the Registrar of Companies and is falling under the category of 'body corporate'. The service providers are individuals. Thus, in terms of the provisions of Sec. 68(2) of the Finance Act, 1994 read with Rule 2(d) of the Service Tax Rules, 1994 and Notn. No. 30/2012 ST as amended, the assessee i.e. the service recipient was liable to pay 75%/ 100% of the service tax payable in respect of Security Services.

16. Further, I find that the assessee had failed to obtain service tax registration and had not filed ST-3 returns. Section 70 of the Finance Act, 1994 stipulates that every person liable to pay the service tax shall himself assess the tax due. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of the service tax on the assessee. The definition of "assessment" available in Rule 2(b) of Service Tax Rules, 1994 is reproduced as under:

> *"assessment" includes self assessment of service tax by the assessee, re-assessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or re-assessed.*

In the instant case the assessee has failed to properly assess the service tax liability and also failed to file their ST-3 returns. Thus, they have resorted to suppression of material facts by not filing the ST-3 returns showing the value of taxable services and the expenses incurred in respect of the services liable to service tax under the reverse charge mechanism in their ST-3 returns. Accordingly, it appears that the service tax amounting to Rs. 74,43,346/- on services of Amusement Facility and Rs. 1,72,633/- on Security services under reverse charge mechanism is liable to be recovered by invoking the extended period of limitation as proviso to Sec. 73 of the Finance Act, 1994 along with interest in terms of the provisions of Sec. 75 of the Finance Act, 1994.

16.1 As discussed in the foregoing para, the assessee have failed to discharge the obligation of self-assessment cast upon them. Under the self-assessment era, the Government has placed full trust on the service provider and the concept is based on mutual trust and confidence. Such a concept operates on the fundamentals of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider. In the instant case the assessee has provided taxable services without having the Service Tax Registration. 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 willful misstatement and suppressing the facts with an intention to evade service tax payment. Thus, I find that the assessee have not paid the service tax by resorting to suppression of facts and contravention of the provisions of law with an intent to evade payment of tax. The Hon'ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008 (231) E.L.T. 3 (S.C.) and further clarified in the case of

U.O.I. Vs. R. S. W. M. reported in 2009 (238) E.L.T. 3 (S.C). Hon'ble Supreme Court has said that the presence of malafide intention is not relevant for imposing penalty and *mensrea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Accordingly, I hold that the assessee have rendered themselves liable to penalty in terms of the provisions of Section 78 of the Finance Act, 1994.

17. Late fees of Rs. 1,40,000/- is sought to be recovered from the assessee for not filing their ST-3 returns within the specified time frame. In this regard the assessee have contended that they were not registered with the service tax department and as such they were not obliged to file ST-3 returns. In this regard I find that Rule 7 of the Service Tax Rules, 1994 stipulates that every assessee shall submit a half-yearly return in Form 'ST-3' for the months covered in the half-yearly return. Section 65B(12) of the Finance Act, 1994 defines the term 'assessee' as a person liable to pay tax and includes his agent. Conjoint reading of both the above provisions, imply that a person who is liable to pay tax is also obliged to file ST-3 returns. In the instant case, it has been held that the assessee was liable to pay service tax and therefore, the provisions of Rule 7 of the Service Tax Rules, 1994 apply. Thus, I find that the argument rendered by the assessee is devoid of merits and late fees in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 is liable to be charged and recovered.

18. Penalty under Section 77 of the Finance Act, 1994 has been proposed in the SCN. The assessee have not made any contentions in this regard. In the instant case, I find that the assessee have failed to correctly self-assess their service tax liability as provided for under Sec. 70 of the Finance Act, 1994 and therefore, I hold them liable to penalty in terms of the provisions of Sec. 77(2) of the Finance Act, 1994. Further, I find that the assessee have rendered taxable services but have failed to obtain service tax registration in terms of the provisions of Sec. 69 of the Finance Act, 1994 and therefore I hold them liable to penalty in terms of the provisions of Sec. 77(1)(a) of the Finance Act, 1994.

19. Personal penalty under Sec. 78A of the Finance Act, 1994 has been proposed on Shri Hitendra Shah, Director of the assessee. He has not made any submissions in this regard. In this regard I find that Shri Hitendra Shah, Director of the said assessee is the person responsible for business activities of the company relating to services provided and liability to pay service tax. However, he has failed to ensure that his company assessed the service tax properly and discharge the same to the Government. This act of omission and commission resulted in evasion and non-payment of service tax as by the assessee as amply discussed hereinabove. Thus, I hold that Shri Hitendra Shah, Director of the assessee has rendered himself liable to penalty in terms of the provisions of Sec. 78A of the Finance Act, 1994.

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

ORDER

a) I confirm the demand of Service Tax to the tune of **Rs. 74,43,346/-** (Seventy Four Lakhs Forty Three Thousand Three Hundred Forty Six only) and order recovery of the same in terms of the proviso to Sec. 73(1) of the Finance Act, 1994 by invoking the extended period of limitation;

b) The service tax to the tune of Rs. 30,00,200/- as detalied at para 14.4 herein above stands appropriated towards the above confirmed demand;

c) I confirm the demand of Service Tax to the tune of Rs. 1,72,633/- (One lakh thirty two thousand six hundred thirty three only) on the Security Services under reverse charge mechanism and order recover of the same in terms of the proviso to Sec. 73(1) of the Finance Act, 1994 by invoking the extended period of limitation;

d) Interest at the prescribed rate should be charged and recovered on the service tax liability mentioned in (a) & (c) above in terms of the provisions of Section 75 of the Finance Act, 1994;

e) I impose a penalty of Rs. 76,15,979/- [Rs.74,43,346/- + Rs.1,72,633/-] (Rs. Seventy Six Lakhs Fifteen Thousand Nine Hundred Seventy Nine only) on the assessee in terms of the provisions of Sec. 78 of the Finance Act, 1994

f) Late fee amounting to Rs. 1,40,000/- (Rupees One lakh forty thousand Only) should be charged and recovered from the assessee in terms of the provisions of Rule 7C of the Service Tax Rules, 1994 for failure to file the ST-3 returns for the period from Jun-2015 to June-2017 within the prescribed time frame;

g) I impose a penalty of Rs. 10,000/- (Rs. Ten Thousand only) on the assessee in terms of the provisions of Section 77(2) of the Finance Act, 1994 for failure to self-assess their service tax liability;

h) I impose a penalty of Rs. 10,000/- (Rs. Ten Thousand only) on the assessee in terms of the provisions of Section 77(1)(a) of the Finance Act, 1994 for failure to obtain registration within the prescribed time frame;

i) I impose a penalty of Rs. 1,00,000/- (Rs. One lakh only) on Shri Hitendra Shah, Director of the assessee in terms of the provisions of Sec. 78A of the Finance Act, 1994.

28/10/19

(Mohit Agrawal)
Additional Commissioner

F.No. STC/04-34/Khodal/O&A/19-20 **Date: 28/10/2019**

BY R.P.A.D.

To,

1. M/s Khodal Corporation Private Limited
   A/3, Sarita Darshan, Opposite Jayhind Press,
   Mithakhali Underpass, Ashram Road, Ahmedabad-380009
2. Shri Hitendra Shah,
   Director of M/s Khodal Corporation Private Limited,
   A/3, Sarita Darshan, Opposite Jayhind Press,
   Mithakhali Underpass, Ashram Road, Ahmedabad-380009

Copy to :

(1) The Principal Commissioner, CGST, Ahmedabad South.
(2) The Assistant/Deputy Commissioner (RRA), Central GST, Ahmedabad South.
(3) The Assistant/Deputy Commissioner, Central GST, Division-VI/Vastrapur, Ahmedabad South.
(4) The Superintendent, Central GST, Range-IV, Division-VI/Vastrapur, Ahmedabad South.
(5) The Superintendent (System), Central GST, Ahmedabad South.
(6) Guard File.