


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-31/OA/2020

DIN-20211264WT0000492734

आदेश की तारीख / Date of Order : 16.12.2021
जारी करने की तारीख / Date of Issue : 21.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR-41/2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-41/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

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

(as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

M/s KANDARP D PATEL, Shop no. 6, Sujay Apartment, Nr. Reliance Fresh, Naranpura, Ahmedabad, Gujarat -380013, were issued SCN dated 23.09.2020 by the department for demand of Service Tax.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/s KANDARP D PATEL, Shop no. 6, Sujay Apartment, Nr. Reliance Fresh, Naranpura, Ahmedabad, Gujarat -380013, are as follows:

M/s KANDARP D PATEL, situated at Shop no. 6, Sujay Apartment, Nr. Reliance Fresh, Naranpura, Ahmedabad, Gujarat -380013 (Now at 301, Addor Ambition , Nr. Navarang Circle, Nr. Lakhudi Talav, Navrangpura, Ahmedabad-380014), (hereinafter referred to as the 'Assessee' for the sake of brevity) engaged in providing taxable services i.e. Travel agents, tour operators are holding PAN No. AUIPP6713H.

2. Information shared by CBDT regarding third party data for the Financial Year 2014-2015 to 2016-17, revealed that the said assessee had earned substantial income by way of providing taxable services, but had neither obtained Service Tax registration nor paid the applicable Service tax thereon.

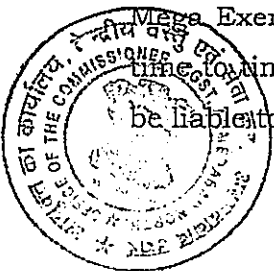
3. On scrutiny of the data, it was noticed that the assessee had earned an income of Rs.8,32,62,097/- for the financial year 2014-15 and Rs. 11,19,35,362/- for the financial year 2016-17. These incomes were reflected under the heads "Sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" by the Income Tax Department.

4. The assessee were requested to provide explanation for such difference vide letter dated 25.07.2020 and 10.08.2020; and Summons dated 18.08.2020 by the department. It was also requested to furnish the documents viz. Audited Balance Sheet/ Profit and Loss Account, Gross Trial Balance, Ledger, Invoices, Form 26AS, ITR and ST-3 Returns for the relevant period. But, the assessee neither produced any documentary evidences nor submitted any reply in the matter.

5. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted.

6. It appeared that, the nature of activities carried out by the assessee as Service Provider were covered under the definition of service and did not appear to be covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. These services also appeared to be not exempted under

Mega Exemption Notification No. 25/ 2012-S.T. dated 20.06.2012, as amended from time to time. Accordingly, the aforesaid services provided by the assessee appeared to be liable to payment of Service Tax.



7. Since, the assessee had not submitted the required details of services provided during the Financial Year 2014-15 and 2016-17, the service tax liability of the service tax assessee was required to be ascertained on the basis of income mentioned in their ITR returns and Form 26AS of the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994.

8. The Service tax payable was calculated on the basis of value of "sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J" as shared by the Income Tax Department for the financial year 2014-15 to 2016-17. By considering the said amount as taxable income, the service tax liability was calculated as detailed given below:-

Sr. No.	Details	FY 2014-15 (Amount in Rs.)	FY 2016-17
1.	Taxable Value as per Income Tax Data i.e. Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)	Rs. 8,32,62,097/-	Rs. 11,19,35,362/-
2.	Amount of Service Tax along with Cess (12% Basic +2% E.Cess+1% H.E.Cess) not paid/ short paid	Rs.1,02,91,196/-	Rs. 1,67,90,304*
	Total Service Tax payable	Rs. 2,70,81,500/-	

* Service Tax along with Cess (14% Basic +0.5% Swachha Bharat Cess +0.5% Krishi Kalyan Cess)

No data was shared by the CBDT, for the period 2015-16 and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issue of SCN it was not possible to quantify short payment of Service Tax, if any, for the period 2015-16,

9. Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs.UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

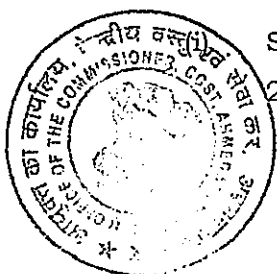
The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR

Sales/Gross Receipts From Services (From ITR)" for the assessment year 2015-16 had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department and the assessable value for the year 2015-16 was not ascertainable at the time of issuance of this Show Cause Notice. If any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2015-16 covered under subject Show Cause Notice, was to be recovered from the assessee.

11. It appeared that the assessee had i) Failed to declare correct, assess and pay the service tax due on the taxable services viz. "Travel Agents, Tour Operators"/any other Declared service, provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;ii) they had failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 iii) had failed to pay service tax, under Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994. iv) the said act appeared to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid was required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. v) The said assessee was also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994. vi) The assessee seems to have contravened Section 77 of the Finance Act, 1994, in as much as they had failed to file correct and true ST-3 returns.

13. Therefore, Show Cause Notice F.No.STC/15-31/OA/2020 dated 23.09.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s KANDARP D PATEL, Shop no. 6, Sujay Apartment, Nr. Reliance Fresh, Naranpura, Ahmedabad, Gujarat- 380013, asking them as to why:

Service Tax of Rs. 2,70,81,500/- not paid for the financial year 2014-15 and 2016-17, should not be demanded and recovered from them under proviso to



Sub-section (1) of Section 73 of Finance Act,1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST.

- (ii) Service Tax liability not paid during the financial year 2015-16,ascertained in future, as per paras no. 9 and 10 above, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994
- (iii) Interest at the appropriate rate should not be demanded and recovered from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act,1994;
- (iv) Penalty under the provisions of Section 77(1) & 77(2) of the Finance Act, 1994, as amended, should not be imposed on them.
- (v) Penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment of Service Tax as explained herein above.

14. **DEFENCE REPLY:**

The assessee vide letter dated 28.09.2020 submitted that they had replied to the department through email on oaahmedabad2@gmail.com . Further the assessee vide letter dated 21.10.2020 submitted their written submission. They have submitted that they are engaged in the business of providing the service of Air Travel Agency Service for booking of Air Travel Tickets for Domestic and International tickets at 301, Ador Ambition, Sardar Patel Stadium, Navrang Circle, Navrangpura, Ahmedabad 380009, in the name and style of "SKY BIRD" w.e.f. 01/07/2017. Prior to 01.07.2017 they were providing the services from shop No. 6, Sujay Apartment, Nr. Reliance fresh, Naranpura, Ahmedabad 380013. They have submitted that the department had issued the notice dated 25.07.2020 and Summons dates 18.08.2020 at their old address i.e. Shop No. 6, Sujay Apartment, Nr. Reliance Fresh, Naranpura, Ahmedabad 3800013, while the assessee was providing the services from the new address i.e. 301, Ador Ambition, Sardar Patel Stadium, Navrang Circle, Navrangpura, Ahmedabad 380009, hence, they had not received the department's letter or summons. They have submitted that service tax payable was calculated on the basis of "sales of Services under Sales/gross Receipts from services (value of ITR)" or "Total Amount Paid/Credited under Section 194C, 194I, 194H, 194J" as provided by the income tax Department from the F.Y.2014-15 and F.Y. 2016-17, by considering the said amount



as taxable income, the way the service liability was calculated was not accepted and the same was denied. They have submitted that they did not agree with the calculation determined by the department. The department has determined the service Tax Liability on the basis of data forwarded by CBDT, on the value i.e. Sales/Gross Receipts from Services (From ITR) considering as taxable value. They have submitted that they had provided the services for the SCN period, i.e. i) ATA (Air Travel Agent Services) on commission basis ii) Visa and Passport Assistance Service iii) Booking of Hotel on Commission basis and Service Tax Liability had to be computed for the different services on commission basis as under;

i) FOR ATA (AIR TRAVEL AGENT SERVICES):

Being ATA (Air Travel Agent) the service tax could be paid by following any of the 2 options i) If processing Fees/Transaction Fees is charged then services tax shall be payable on commission plus processing fees/transaction fees. ii) If there is no processing fees/transaction fees then service tax shall be payable only on commission.

ii) FOR VISA AND PASSPORT ASSISTANCE SERVICE:

Service Tax would be paid on the amount charged from the Service Tax receiver on charges which represent actual statutory fees towards visa subject to the fulfilment of the conditions laid down in rule 5(2) of the service Tax (determination of Valuation) Rules, 2006.

iii) FOR HOTEL BOOKING ON COMMISSION BASIS:

In case of commission from hotels and agents, the value of taxable services do not alter then service tax shall be paid on the said commission amount from the hotels and agents. Service Tax shall be paid on the service charges collected from the customer/ clients/service receivers.

They have submitted the details of the year wise margin and service tax liability as follows:

Year	2014-15	2015-16	2016-17	Total
Sales/Commission received	8,34,47,842 /-	7,89,15,073 /-	11,25,18,434/-	27,48,81,349/-
Purchase	8,13,33,160/-	7,64,49,258 /-	10,83,04,034 /-	26,60,86,452/-
Service charges collected/margin/service charges on vise fees (including service tax)	21,14,682/-	24,65,815/	42,14,400/	87, 94,897/
Basic Exemption Limit for First Year	-10,00,000/	0	0	-10,00,000/-
Net Amount chargeable for service tax	11,14,682/-	24,65,815/-	42,14,400/-	77, 94,897/-
Service Tax	1,22,620/-	3,00,788/-	5,47,228/-	9,70,636/-



(alongwith CESS/SBC/KKC as applicable from time to time)				
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They have submitted that, above value of sales includes the margin received from the customers for various services ie. a) For Air Travel Ticket : Cost of the Air tickets, b) For visa and passport Assistance service : Visa Fees paid to the Consulate, c) For Hotel Booking Service : Cost of Hotel Booking provided to the Service Recipients, d) value of services income were included with the tax and other taxes.

They have submitted that being not aware of the legal requirement pertaining to service tax and its payment, assessee had not obtained the service tax registration. They have submitted that they are ready to pay all the legal dues of service tax liability. They have submitted that they had obtained the registration under the GST. They have submitted that they have made lump sum payment of Rs. 2,38,417/- on 26.09.2020 against the service tax liability in total, without prejudice to their right of refund. They have further submitted that they required some more time to pay service tax for the F.Y. 2014-15 to 2016-17. They have submitted the Statement of income, Copy of ITR-V, Form No. 3CB and 3CD for Tax Audit Report, Audited Balance Sheet and Profit and loss Account, Form No.26 AS for the FY. 2014-15, 2015-16 & 2016-17, Copy of challan for payment of Rs.2,38,417/- towards service tax liability.

15. PERSONAL HEARING:

Personal Hearing in the subject issue was held on 18.11.2021. Shri Mahendra Parmar, C.A. appeared for personal hearing on behalf of the assessee. He referred to their written reply dated 20.10.2020 on the subject matter. They also submitted copies of invoices for verification. They have requested to decide the case on merit.

16. DISCUSSION AND FINDINGS:

I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 20.10.2020, and the documents submitted by the assessee on the subject matter.

On going through the SCN, I find that basically the essence of the case is that Sales /Gross receipt from services were shared by the CBDT with CBIC for FY 2014-15 to 2016-17, wherein the assessee had earned substantial income of Rs.



Rs.8,32,62,097/- for the financial year 2014-15 and Rs. 11,19,35,362/- for the financial year 2016-17 by providing the taxable services. The assessee had neither obtained Service Tax registration nor paid Service Tax thereon, and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the taxable value of value of Rs.8,32,62,097/- for the financial year 2014-15 and Rs. 11,19,35,362/- under proviso to section 73(1) of Finance Act, 1944 or not.

16.2 I find that the assessee in their reply dated 21.10.2020 has stated that they are engaged in the business of providing the service of Air Travel Agency Service for booking of Air Travel Tickets for Domestic and International Tickets. They have stated that service tax payable calculated in the SCN was on the basis of "sales of Services under Sales/gross Receipts from services (value of ITR)" or "Total Amount Paid/Credited under Section 194C, 194I, 194H, 194J" submitted to the income tax department from the F.Y.2014-15 and F.Y. 2016-17. They have denied the ratio of calculation as determined in the SCN. They have stated that they were providing the services for Air Travel Agent Services on commission basis, Visa and Passport Assistant Service and Booking of Hotel on commission Basis. They have stated that Service Tax liability has to be computed for the different services on commission basis e.g. for Air Travel Agent Services, if the processing fees/transaction fees was charged then service tax should be paid on commission plus processing fees/transaction fees and if there was no proceeding fees/transaction fees then service tax should be paid on commission, for Visa and Passport Assistance Service, the tax would be paid on the service tax receiver on charges which actual statutory fees towards visa as per rule 5(2) of the Service Tax (determination of Valuation) Rules,2006, for hotel booking, if the value of taxable services do not alter from hotels and agents, service tax should be paid on the commission amount from the hotels and agents.

16.3 I find that assessee had neither obtained Service Tax registration under the Finance Act,1994, nor paid the Service Tax. The assessee are now registered under the CGST and are holding GST registration No.24AUIPP6713H1ZJ

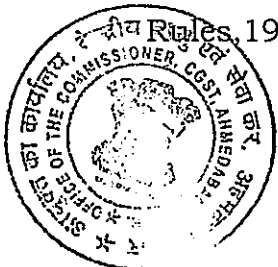
16.4 I find that assessee has been audited by Atul Dalal & Co., Chartered Accountants (firm Reg. No.100760W) and they had issued audit report dated 27.10.2015 for F.Y.2014-15, dated 13.10.2016 for F.Y.2015-16 and dated 31.10.2017 for F.Y.2016-17 under Section 44AB of the Income Tax Act,1961. On going through the Profit & Loss Account of audit report, I find that in Profit and Loss Account of F.Y. 2014-15 Sales income of Rs.83262097.16 and Commission of Rs.185745/-; for F.Y. 2015-16 Sales income of Rs.78655014.27 and Commission of Rs.260059/- and for F.Y. 2016-17 Sales income of Rs.111935361.61 and Commission of Rs.196422/- has been shown and the same amount has been reflected in the data provided by the CBDT data as "Sales of services under Sales/Gross Receipts From Services (Value from ITR)" or "Total Amount Paid/Credited Under Section 194C, 194I, 194H, 194J. It is thus established that amount of Sales/Gross receipts from services (Value of ITR) shown in SCN tallies with Profit & Loss account for the F.Y.2014-15 & 2016-17 and the same has been shown as income of sales and commission.

16.5 Further, assessee has provided the details of the customer wise commission received for the period from 01.04.2014 to 31.03.2015, 01.04.2015 to 31.03.2016 & 01.04.2016 to 31.03.2017. The assessee has provided the year wise details regarding liability of Service Tax as under:

Year	2014-15	2015-16	2016-17	Total
Sales/Commission received	8,34,47,842	7,89,15,073	11,25,18,434	27,48,81,349/-
Purchase	8,13,33,160	7,64,49,258	10,83,04,034	26,60,86,452/-
Service Charges Collected/Margin/Service charges on visa fees(Including Service Tax)	21,14,682/-	24,65,815/-	42,14,400/-	87,94,897/-
Basic Exemption Limit For First Year	-10,00,000/-	0	0	-10,00,000/-
Net Amount Chargeable to Service Tax	11,14,682/-	24,65,815/-	42,14,400/-	77,94,897/-
Service Tax (Along with Cess/SBC/IKKC as applicable from time to time)	1,22,620/-	3,00,788/-	5,47,228/-	9,70,636/-

I find that the assessee had an option to pay the Service tax at prescribed rate as per Rule 7 of the Service Tax Rules,1994. Rule 7 of Service Tax

Rules, 1994 reads as under:



(7)The person liable for paying the service tax in relation to the services [of booking of tickets for travel by air] provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of [0.7%] of the basic fare in the case of domestic bookings, and at the rate of [1.4%] of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax [at the rate of specified in Section 66B of Chapter V of the Act] and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

17 I find that in the instant case, the assessee had not opted for Rule 7 of the Service Tax Rules,1994, accordingly, they have to discharge their service tax liability at the rate specified in Section 66B of Chapter V of the Finance Act,1994.

18. Having gone through the reply and documents submitted by the assessee, I discern from P&L accounts that the assessee had Sales income of Rs.83262097.16 and Commission of Rs.185745/-, Sales income of Rs.78655014.27 and Commission of Rs.260059/- & Sales income of Rs.111935361.61 and Commission of Rs.196422/- for F.Y.2014-15, 2015-16 & 2016-17 respectively. I find that the assessee had purchase of Rs.8,13,33,155/- for F.Y.2014-15, Rs.7,64,49,258/- for F.Y.2015-16 & Rs. 10,83,04,034/- for F.Y.2016-17.

18.1 Further, I find that the air fare collected by the Air Travel Agent in respect of service provided by the agent has been excluded to determine the taxable value for the purpose of service tax, rule 6(2)(ii) of the Service Tax (determination of Value) Rules,2006. The said rule is reproduced herewith below;

6. Cases in which the commission, costs, etc., will be included or excluded.-

(1) Subject to the provisions of section 67, the value of the taxable services shall include,-

(i) the commission

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include-

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

(ii) the airfare collected by air travel agent in respect of service provided by him;

The assessee were also providing the service for visa and passport assistance in that capacity, they were working as pure agent, and in that case taxable value for service tax could be determined under Rule 5(2) of the Service Tax (Determination

of Value) Rules, 2006. Rule 5(2) of Service Tax (determination of Value) Rules,2006.

The said rules are reproduced herewith below;

5. Inclusion in or exclusion from value of certain expenditure or costs.-

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

[*Explanation.-* For the removal of doubts, it is hereby clarified that for the services specified in sub-clause (zzzx) of clause (105) of section 65 of the Finance Act, 1994, the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.]

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1.- For the purposes of sub-rule (2), "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

18.2 The assessee have provided sample invoice no. IW/2009388 dated 05.05.2017 issued by Aadesh Travels Pvt. Ltd., with corresponding invoice No.IA0000172 dated 06.05.2017, sample invoice no. IW/31321 dated 21.03.2015 issued by Aadesh Travels Pvt. Ltd., with corresponding invoice No.IA0001075 dated 24.03.2015, sample invoice no. IW/1528461 dated 05.09.2015 issued by Aadesh Travels Pvt. Ltd., with correspondence invoice No.IA0000451 dated 05.09.2015 issued by the assessee. The assessee have shown the handling charges in the invoices issued by him, and the assessee has contended that on that charges only the assessee had to make payment of service tax. The assessee have provided the copy of ledger account, customer wise

Commission received for F.Y.2014-15,2015-16 and 2016-17, they have also provided



the copy of ledger account in respect of M/s. Vadilal Industries Ltd., for the F.Y.2014-15, 2015-16 and 2016-17, in which service charges have been shown separately.

18.3 The assessee have submitted the Audit Report for the F.Y.2014-15, 2015-16 and 2016-17 issued by Atul J Dalal., Chartered Accountants, SF1, Abhishek , C.G. Road, Navrangpura, , Ahmedabd-380 006 under Section 44AB of the Income Tax Act,1961 in respect of M/s. Kandarp D. Patel. Sr.No.10a of the Form No.3CD shows the nature of business or profession as under;

sector	Sub-sector	Code
Service Sector	TRAVEL AGENTS, TOUR OPERATOR	0713

From the above it is established that the assessee were providing services as travel agents, tour operator.

18.4 Further, I find that on going through the balance sheet, for the F.Y. 2013-14 Sales and Commission of Rs.3,73,41,734/- received and purchases of Rs.3,61,42,851.79 have been shown which essentially means that the assessee had taxable income of Rs.11,98,883/- for the year 2013-14. The assessee had taxable income of Rs.11,98,883/- for the F.Y. 2013-14, hence, the assessee was not entitled for basic exemption limit of Rs.10,00,000/- in the next Financial Year i.e. 2014-15 as claimed by them vide their letter dated 21.10.2020. I find that as per para2(viii) of Notification No.30/2012-ST dated 20.06.2012, the assessee is not eligible to avail the exemption provided to small scale service provider, as their annual turnover in F.Y.2013-14 had exceeded Rs.10,00,000/-. Hence, the assessee are not eligible for basic exemption limit of Rs.10,00,000/- for the F.Y.2014-15 as claimed vide their letter dated 21.10.2020. The assessee can avail the basic exemption of Rs.10,00,000/- , if their aggregate value of taxable services rendered from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

Para2(viii) of the Notification NO. 33/2012-ST dated 20.06.2012, are reproduced as under;

Notification No.33/2012-ST, dated 20.06.2012

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), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India,



Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, 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 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:- (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 (herein after 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, 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;

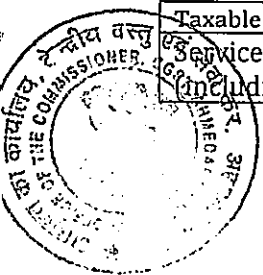
(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider 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 ten lakh rupees in the preceding financial year.

18.5 I find that assessee have not submitted copy of agreement with their client, they have submitted the details of commission received for F.Y.2014-15,2015-16 and 2016-17, On going through the sale and purchase data of the assessee , I find that assessee are liable to make payment of service tax for the F.Y.2014-15,2015-16 and 2016-17 calculated as under:

	2014-15	2015-16	2016-17
a. Sales and Commission as per Balance Sheet	83447842/-	78915073/-	112518434/-
b. Purchase as per balance sheet	81333160/-	76449258/-	108304034/-
Taxable Amount (a-b)	2114682/-	2465815/-	4214400/-
Service Tax to be recovered (including cess)	261375/-	357543/-	632160/-



In view of the above calculation, Service Tax of Rs.12,51,078/- is demanded and the same is to be recovered from the assessee under Section 73 of the Finance Act,1994. I find that the assessee have submitted the copy of challan dated 26.09.2020 for payment of Rs.2,38,417/- stating that they have made payment towards their entire Service Tax liability. On verification of the said challan I find that it was for payment of CGST and not for Service Tax, hence, the assessee's argument that they have made payment of Service Tax liability in lump sum is not acceptable. Since, assessee have not provided the details/documents/information for the period 2017-18 (up to June,2017), I refrain to enter in the said period and confine myself only to the F.Y.2015-16 & F.Y.2016-17.

18.6 It is clear that the activity carried out by the assessee of Air Travel Agency, Visa and Passport Assistant Service, Booking of Hotel on Commission basis falls within the meaning of 'service' as defined under the provisions of Section 65B(44) of the Act. The relevant text to Section 65B (44) of the Finance Act, 1994 ('Act') reads as under:

"service' means any activity carried out by a person for another for consideration, and includes a declared service"

'Taxable Service' defined under Section 65B (51) of the Act reads as under:

"taxable service" means any service on which service tax is leviable under section 66B"

I therefore find that the assessee had provided taxable services under the Finance Act,1994 and the assessee is liable to pay of Service Tax for the F.Y.2014-15, 2015-16 & 2016-17.

19. In view of the above discussions and findings, the invoking of extended period of limitation under Section 73 of the Finance Act, 1994 is held as correct and sustainable.

20. Further, I find that invoking extended period of limitation has been discussed in the SCN at length. It is my considered view that the Government has from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service



providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence have been put in place. In the spirit of mutuality of trust and transparent tax administration with reduced compliance burden vis-à-vis rules & procedures the government has consciously promoted the industries interest. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the Finance Act, 1994 and Rules made thereunder, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the assessee. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it is observed that the assessee had knowingly suppressed the fact of receiving income under Air Travel Agency Service/Pure Agent service/Works Contract Service. This deliberate act of suppressing income under Finance Act, 1994 is in utter disregard to the requirements of law and breach of trust deposited on them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

21. Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable under the Service Tax. However, in spite of knowing the facts; they chose not to pay the said applicable dues related to Service Tax. This has been done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the third party data not received from CBDT. These acts on the part of the assessee are tantamount to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service Tax.

22. Since in the instant case, suppression of material facts have been established beyond doubt after discussions in the paras supra, I consider this

as a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads 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 :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.”

22.1 Since, it is already proved that the assessee had suppressed the facts, the consequences shall automatically follow. Hon’ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and further clarified in the case of U.O.I. Vs. RSWM reported in 2009(238)ELT3(SC). Hon’ble Supreme Court has said that the presence of **malafide** 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. Further, Hon’ble High of Karnataka at Bangalore in the case of Motor World (2012(27)STR225(Kar.)) held that;



"Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service.....

.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act....."

22.2 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful mis-statement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order penalty would be further reduce to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days referred to be. Thus the assessee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the facts that they were providing the taxable service.

23. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services; violated the provisions of Section 68 of the act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2014-15, 2015-16 & 2016-17. Further, the assessee has not assessed the tax due, properly, on the



services provided by them, as discussed above, and failed to file ST3 returns in time thereby violated the proviso of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

24. Further, in view of the discussion made in the forgoing paras, I hold that the assessee has failed to pay the service tax on the taxable income received by suppressing the facts from the department by contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax Rules, 1994. The service tax liability of the assessee has been determined as under:

Year	Total Taxable Value as per SCN	Amount of Service Tax demanded in SCN	Sales and Commission as per Balance Sheet	Purchase as per Balance Sheet	Taxable amount	Service Tax to be payable (including cess)
(a)	(b)	(c)	(d)	(e)	(f) = (d-e)	(g)
2014-15	83262097/-	10291196/-	83447842/-	81333160/-	2114682/-	261375/-
2015-16	Not provided	--	78915073/-	76449258/-	2465815/-	357543/-
2016-17	111935362/-	16790304/-	112518434/-	108304034/-	4214400/-	632160/-

Accordingly, the Service Tax totally amounting to Rs. 12,51,078/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

25. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I confirm the demand of Service Tax amounting to Rs. 12,51,078/- (Rs. Twelve Lakh Fifty One Thousand Seventy Eight Only) and order that the same amount be recovered from M/s. Kandarp D. Patel under Section 73(1) of the Finance Act, 1994.



(ii) I order to recover interest at the applicable rate from M/s. Kandarp D. Patel, under the provisions of Section 75 of the Finance Act, 1994.

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(1) of the Finance Act,1994 for failure take registration, not make payment of Service Tax and non filing of ST3 returns.

(iv) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(2) of the Finance Act,1994 for failure take registration, not make payment of Service Tax and non filing of ST3 returns.

(v) I impose penalty of Rs. 12,51,078/- (Rs. Twelve Lakh Fifty One Thousand Seventy Eight Only) under section 78(1) of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery
F. No. STC/15-31/OA/2020

Date: 16.12.2020.

To
M/s. Kandarp D. Patel
301, Addor Ambition
Nr. Navarang Circle,
Nr. Lakhudi Talav,
Navrangpura,
Ahmedabad-380 014.



Copy for information to:

- 1 The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
- 3 The Superintendent, Range-I, Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File.