


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(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/ F.NO.STC/15-52/OA/2020

DIN- 2 0220164 WFO 000 22 2021

आदेश की तारीख / Date of Order : 28. 12.2021
जारी करने की तारीख / Date of Issue : 67- 01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR- 45 /2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-45 /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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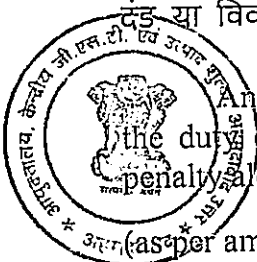
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर 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 Live Travel Services, GF-4, Devbhumi Shopping Centre, Nr. Archita Flat, Nr. Vijay Cross Road, Navrangpura, Ahmedabad-380 009, were issued SCN dated 28.09.2020 by the department for demand of Service Tax.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/s Live Travel Services, GF-4, Devbhumi Shopping Centre, Nr. Archita Flat, Nr. Vijay Cross Road, Navrangpura, Ahmedabad-380 009, are as follows:

M/s Live Travel Services, situated at GF-4, Devbhumi Shopping Centre, Nr. Archita Flat, Nr. Vijay Cross Road, Navrangpura, Ahmedabad-380 009, (hereinafter referred to as the 'Assessee' for the sake of brevity) engaged in providing taxable services, are holding Service Tax Registration No. ABZPJ6790LST001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" of M/s. Live Travels Services was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y.2014-15, 2015-16 & 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the Divisional office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y.2014-15,2015-16 & 2016-17, the total sales of service (Value from ITR) were found to not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2014-15,2015-16 & 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2014-15, 2015-16 & 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2014-15, 2015-16 & 2016-17. The difference in value as observed for FY 2014-15, 2015-16 & 2016-17 was as under:

(Amount in Rs.)					
Sr No	F. Y.	Total Sale of Service as per ITR/value as per P&L Acc	TOTAL GROSS VALUE PROVIDED (STR)	Value difference in ITR and STR	Resultant Service Tax short paid (including Cess)
1	2014-15	NA	18695841/-	42210583/-	5217228/-
2	2015-16	67691800/-	14395039/-	53296761/-	7771530/-
3	2016-17	80001083	22311890/-	57689193/-	8653379/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. Rs.2,16,42,137/- (including Cess) on the differential value of Rs.15,31,96,537/-.



4. The assessee were requested to provide explanation to department for such difference vide letter dated 12.02.2018, 03.05.2019 for difference in value shown in ST-3 Returns vis-à-vis that shown in Income Tax return filed for FY 2014-15, 2015-16 & 2016-17. 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 FY 2014-15, 2015-16 & 2016-17. But, the assessee neither produced any documentary evidences nor submitted any reply in the matter.

As per the provisions of Section 70 of the Finance Act,1994,

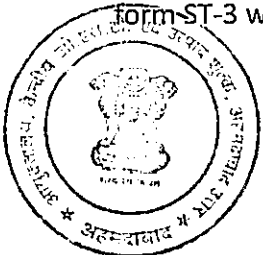
(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed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

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

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

5. As per the provisions of *Section 73(1)* of the Finance Act,1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful misstatement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

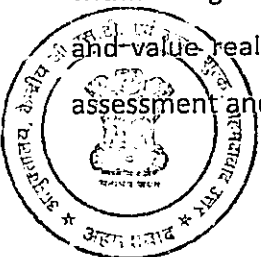
6. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that assessee shall submit their Service Tax returns in the form-ST-3 within the prescribed time.



7. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 2,16,42,137/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2014-15, 2015-16 & 2016-17 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,16,42,137/- (including Cess) worked out on value of Rs.15,31,96,537/- and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

8. Therefore, it appeared that the said assessee had (i) Failed to declare correctly, assess and pay the service tax due on the taxable services 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) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2014-15, 2015-16 & 2016-17; (iv) 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; (vi) The said assessee also appeared 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; (vii) The said assessee also appeared to have contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.

9. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2014-15, 2015-16 & 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs.2,16,42,137/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.



10. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 2,16,42,137/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

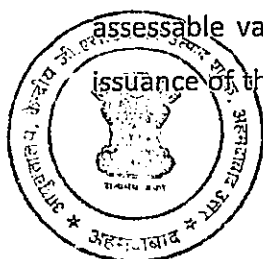
11. No data was shared by the CBDT, for the period 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

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.'

12. The "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2017-18 (upto June-2017) 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 2017-18 (upto June-2017) 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 2017-18 (upto June-2017) covered under subject Show Cause Notice, was to be recovered from the assessee.

13. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the said amount of Service Tax amounting to Rs. 2,16,42,137/- (inclusive of Cess) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

14 All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

15. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax rendering them liable for penalty under Section 78 of the Finance Act, 1994.

16. Therefore, Show Cause Notice F. No. STC/15-52/OA/2020 dated 28.09.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s Live Travel Services, GF-4, Devbhumi Shopping Centre, Nr. Archita Flat, Nr. Vijay Cross Road, Navrangpura, Ahmedabad- 3800093, asking them as to why:

- (i) Service Tax of Rs. 2,16,42,137/- (Rs. Two Crore Sixteen Lakh Forty Two Thousand One Hundred Thirty Seven) not paid, 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 2017-18 (upto June,2017),ascertained in future, as per paras no. 7 and 8 of the SCH, 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 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 should not be imposed upon them under the provision of Section 78 of the Finance Act; 1994.

17. DEFENCE REPLY:

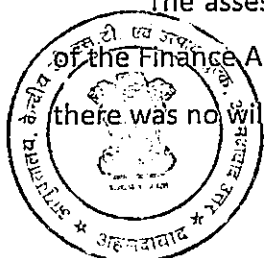
The assessee vide letter dated 10.11.2020 submitted their written submission. They denied all the allegations and averments made in the subject SCN. They have submitted that they particularly denied that noticee had contravened the provisions of section of the Act and that they were liable for penal action. They have submitted that the department had computed demand of service tax for the period 2014 -15 to 2016-17 on the basis of reconciliation. The noticee had drawn attention towards the fact that the department had computed demand of service tax for the period of April -2014 to March-2017 on the basis of reconciliation of ST3 returns with the financial statements. The assessee have submitted their own reconciliation wherein there was no short payment of service tax. They have further submitted that while doing the reconciliation of income with books of accounts, the department has not taken factual details and the department had raised the SCN without considering the factual details.

They have relied upon the following case laws in support of their arguments to support their contention that the department had not taken factual facts into account & had raised the demand of service tax which was unjustified and the same was fit to be quashed/dropped ;

- 2013(31)STR673 (Tri-Bang) REGIONAL MANAGER, TOBACCO BOARD Versus COMMR. OF C. EX., MYSORE
- 2010 (20) S.T.R. 789 (Tri. - Mumbai) ANVIL CAPITAL MANAGEMENT (P) LTD.Versus COMMR. OF S.T., MUMBAI
- 2010 (19) S.T.R. 242 (Tri. - Ahmd.)COMMISSIONER OF SERVICE TAX, AHMEDABAD Versus PURNI ADS. PVT. LTD.
- 2009 (16) S.T.R. 63 (Tri. - Chennai) SIFY TECHNOLOGIES LTD. Versus COMMISSIONER OF SERVICE TAX, CHENNAI
- 2013 (30) S.T.R. 62 (Tri. - Ahmd.) BHOGILAL CHHAGULAL & SONS Versus COMMISSIONER OF S.T., AHMEDABAD

The assessee have further submitted that SCN covers the period from 01.04.2014 to 31.03.2017 and SCN had been issued on 28.09.2021, that the SCN had invoked the extended period of limitation. The assessee have submitted that they were filing income tax returns and service tax returns regularly from time to time, they have submitted that the extended period of limitation cannot be invoked in the instant case since there was no suppression, wilful misstatement.

The assessee have further submitted that penalty cannot be imposed under Section 78 of the Finance Act,1994, as they had not suppressed any information from the department and there was no wilful misstatement on part of the assessee. They have submitted that it had to be



established that there was a short payment of service tax by reason of fraud collusion, wilful misstatement, and suppression of facts or contravention of any provisions of the Act or rules made thereunder with intent to evade payment of service tax. The assessee have submitted that SCN merely alleged baldly that there was suppression on the part of the assessee. The SCN had not brought any evidence/facts which can establish that the assessee had suppressed anything from the department. They have submitted that instant case was not the case of fraud, suppression, wilful misstatement of facts, etc., hence, the penalty under Section 78 cannot be imposed on them. They have further submitted that they were entitled to entertain the belief that their activities were not taxable. They have relied upon the Hon'ble High Court of Gujarat decision in case of Steel Cast Ltd.

The assessee have submitted that penalty under Section 77 was not imposable, as there was no short payment of service tax. They have submitted that they had always been and were still under the bonafide belief that they were not liable for payment of service tax. They have relied upon the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Vs. The state of Orissa, the decision was followed by the Trinunal in the case of Kellner Pharmaceuticals Ltd., Vs. CCE. They have further submitted that the contraventions, if any, were not with the intention to wilfully evade payment of service tax. They have further relied upon the Hon'ble Supreme Court judgment in the case of Pushpam Pharmaceuticals Company V CCE. They have submitted that similar view had been taken by the Hon'ble Supreme Court in the case of CCE vs. Chemphar Durgs and Lininents. They have submitted that it is a settled principle of law that if a dispute is arising out of interpretation of the provisions of statute or exemption notification, no penalty could be imposed. They have relied upon the following case laws;

2002 (146) E.L.T. 118 (Tri. - Kolkata),,BHARAT WAGON & ENGG. CO. LTD. Versus COMMISSIONER OF C. EX., PATNA

2001 (135) E.L.T. 873 (Tri. - Kolkata) GOENKA WOOLLEN MILLS LTD. Versus COMMISSIONER OF C. EX., SHILLONG

2001 (129) E.L.T. 458 (Tri. - Del.) BHILWARA SPINNERS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, JAIPUR

The assessee had requested to drop the proceedings in the interest of justice.

18. PERSONAL HEARING:

Personal Hearing was granted to the noticee on 10.12.2021. Shri Vipul Khandar, Chartered Accountant appeared for personal hearing on behalf the assessee. They referred to the written reply of the noticee tendered on 10th November, 2020. They submitted additional submission, documents of the challans to buttress/augment their arguments/contention. They submitted that in light of the aforementioned submission no liability exists for the noticee, hence, the demand needs to be dropped in the interest of justice.



19. 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 10.11.2021, documents submitted on the date of personal hearing and oral submission made by the assessee during the personal hearing.

19.1 On going through the SCN, I find that basically the essence of the case is that data of Sales /Gross receipt from services were shared by the CBDT with CBIC for FY 2014-15 to 2016-17, wherein the assessee had shown substantial income of Rs. 15,31,96,537/- for the financial year 2014-15, 2015-16 & 2016-17 for providing the taxable services. 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. 15,31,96,537/- for the financial year 2014-15, 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

19.2 I find that the assessee in their reply dated 10.11.2020 have stated that there was no short payment of service tax; they have submitted that the SCN had been issued without reconciliation of income with books of accounts, that the department had not taken factual details in to account before issuance of SCN. They have submitted the year wise reconciliation statement and submitted that no liabilities arise on them. The assessee have submitted that they were providing the following services i.e. Air Travel Agent Service, Business Auxiliary Services, Rent a Cab Service, Tour Operator Service. They have submitted the reconciliation for F.Y.2014-15, 2015-16, 2016-17 & 2017-18 (up to June,2017) as under:

2014-15

SERVICE	GROUP	SALES AMOUNT	PURCHASE AMOUNT	MARGIN	ST PAID ON
INTERNATIONAL HOTEL BOOKING	TOUR	7068223	6455506	612717	7068223
PACKAGE BOOKING	TOUR	5702347	4981024	721323	5702347
VISA CHARGES	BAS	3135732	2688571	447161	447161
MISC CHARGES	BAS	21406	0	21406	21406
TRANSPORT SERVICE CHARGES	RENT A CAB	4261715	3694925	566790	4261715
AIR TICKET DOMESTIC	AIR TRAVEL AGENT	18810435	17769526	1040909	1040909
AIR TICKET INTERNATIONAL	AIR TRAVEL AGENT	34680396	33263986	1416410	1416410
TOTAL AS PER BALANCESHEET		73680254	68853538	4826716	19958171

2015-16

SERVICE	GROUP	SALES AMOUNT	PURCHASE AMOUNT	MARGIN	ST PAID ON
INTERNATIONAL HOTEL BOOKING	TOUR	5890658	5121388	769270	5890658
PACKAGE BOOKING	TOUR	2828586	2619708	208878	2828586
VISA CHARGES	BAS	3173957	2682166	491791	491791
MISC CHARGES	BAS	115362	0	115362	115362
TRANSPORT SERVICE CHARGES	RENT A CAB	4079202	3418824	660378	4079202
AIR TICKET DOMESTIC	AIR TRAVEL AGENT	17120009	16109312	1010697	1010697
AIR TICKET INTERNATIONAL	AIR TRAVEL AGENT	34484026	32783188	1700838	1700838
TOTAL AS PER BALANCE SHEET		67691800	62734586	4957214	16117134

2016-17

SERVICE	GROUP	SALES AMOUNT	PURCHASE AMOUNT	MARGIN	ST PAID ON
INTERNATIONAL HOTEL BOOKING	TOUR	13321629	12084486	1237143	13321629
PACKAGE BOOKING	TOUR	5867560	5339203	528357	5867560
CRUISE BOOKING	TOUR	33596	0	33596	33596
INSURANCE CHARGES	BAS	35935	24967	10968	10968
VISA CHARGES	BAS	2394705	2017298	377407	377407
MISC CHARGES	BAS	1147777	875512	272265	272265
TRANSPORT SERVICE CHARGES	RENT A CAB	4279923	3759642	520281	4279923
AIR TICKET DOMESTIC	AIR TRAVEL AGENT	17341432	16174370	1167062	1167062
AIR TICKET INTERNATIONAL	AIR TRAVEL AGENT	35578526	34000122	1578404	1578404
TOTAL AS PER BALANCESHEET		80001083	74275600	5725483	26908814

2017-18 (UP TO JUNE,2017)

SERVICE	GROUP	SALES AMOUNT	PURCHASE AMOUNT	MARGIN	ST PAID ON
HOTEL BOOKING	TOUR	4688042	4274447	413595	4688042
PACKAGE BOOKING	TOUR	748992	709327	39665	748992
VISA CHARGES	BAS	1063005	879879	183126	183126
MISC CHARGES	BAS	230244	174488	55756	55756
COMMISSION	BAS	14232		14232	14232
TRANSPORT SERVICE CHARGES	RENT A CAB	949804	832648	117156	949804
AIR TICKET DOMESTIC	AIR TRAVEL AGENT	4119367	3869691	249676	249676
AIR TICKET INTERNATIONAL	AIR TRAVEL AGENT	12140677	11540887	599790	599790
TOTAL AS PER TRIAL BALANCESHEET AS ON 30/06/2017		23954363	22281367	1672996	7489418

19.3 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, as per rule 6(2)(ii) of the Service Tax (determination of Value) Rules,2006. The said rule is reproduced herein 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:-

19.4. I find that the assessee were also providing the service for visa and passport assistance and 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 is reproduced herein



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."

19.5 I find that in case of commission from hotels and agents when 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.

19.6 I find that in case of Tour Operator & Rent-a-Cab operator, they had availed the Benefit of Exemption Notification No. 26/2012 dated 20.06.2012, Sr.No.11 (i) & (ii) & 9 respectively and they had paid the service tax after availing the benefit of exemption notification no.26/2012 dated 20.06.2012 as amended.

19.7. I find that in case of Misc charges received under Business Auxiliary Service, the assessee had paid service tax on full amount received being service provided under Business Auxiliary service.

19.8. I find that the assessee has been audited by U. P. Bhavsar, Partner M.No.43559 of Kishan M. Mehta & Co, Chartered Accountants, Firm's Registration No.105229W and they



had issued audit report dated 30.09.2015 under Section 44AB of the Income Tax Act, 1961 for F.Y.2014-15, audit report dated 14.10.2016 under Section 44AB of the Income Tax Act, 1961 for F.Y.2015-16 and audit report dated 27.10.2017 under Section 44AB of the Income Tax Act, 1961 for F.Y.2016-17. Section 44AB of Income Tax, Act,1961 is reproduced below;

SECTION - 44AB, INCOME-TAX ACT, 1961-2021

Audit of accounts of certain persons carrying on business or profession.

44AB. ⁶Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ⁷[***]:

⁸[Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

²[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,]

this clause shall have effect as if for the words "one crore rupees", the words "¹⁰[ten] crore rupees" had been substituted; or]

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

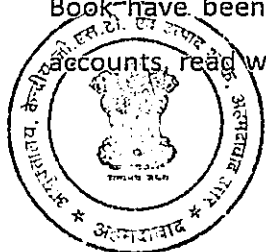
(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

I find that in Form No.3CD issued by the auditor U. P. Bhavsar, Partner M.No.43559 of Kishan M. Mehta & Co, Chartered Accountants, Firm's Registration No.105229W. In para 4 of the said form it has been established that the assessee are liable to pay Service Tax and they are holding Service Tax registration No. ABZPJ6790LST001, para 10 of the audit report states that they were dealing in the business of Travel, Tour and other related services, para 11 the said audit report states that Ledger, Cash Book, Purchase Book, Sales Book, Bank Book, Journal Book have been examined to the best of their information and knowledge, that the said accounts, read with notes thereon financial statements give a true and fair view of the state of



the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. I find that the assessee has submitted the copy of Audit Report under Section 44AB of the Income Tax Act,1961 for F.Y.2014-15, 2015-16 and 2016-17 alongwith Profit & Loss Accounts including all Annexure.

19.9 I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by assessee during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

19.10 I find that assessee has been audited by U. P. Bhavsar, Partner M.No.43559 of Kishan M. Mehta & Co, Chartered Accountants, Firm's Registration No.105229W and they had issued audit report dated 30.09.2015 for F.Y.2014-15, dated 14.10.2016 for F.Y.2015-16 and dated 27.10.2017 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.73680254/-; for F.Y. 2015-16 Sales income of Rs.67691800/- and for F.Y. 2016-17 Sales income of Rs.80001083/- had been shown and the same amount had 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.2015-16 & 2016-17 and the same had been shown as income of sales and commission.

20. 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.73680254/- for F.Y. 2014-15; Sales income of Rs.67691800/- for F.Y. 2015-16, Sales income of Rs.80001083/- for F.Y. 2016-17 and Sales income of Rs.2,39,54,363/- for F.Y.2017-18 (upto June,2017). I find that the



assessee had purchase of Rs.6,88,53,538/- for F.Y.2014-15, Rs.6,27,34,586/- for F.Y.2015-16, Rs. 7,42,75,600/- for F.Y.2016-17 and Rs. 2,22,81,36/- for F.Y.2017-18 (upto June,2017).

21. 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 at rule 6(2)(ii) of the Service Tax (determination of Value) Rules,2006 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:

22. I find that the assessee were also providing the service for visa and passport assistance and 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 is reproduced herein 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.

23. The assessee have provided sample invoice no. DA0000008 dated 04.04.2015, IA0000108 dated 21.05.2015, MI0000003 dated 06.04.2015, MI0000025 dated 13.04.2015, MHI00000008 dated 06.04.2017, MSI00000001 dated 04.04.2017, MKI00000009 dated 26.04.2016 issued by Live Travels, Ahmedabad. The invoices show the service tax separately. It establishes the service tax liability on the assessee and shows that the said service tax had been paid by the assessee in respective Financial Year.

24. The assessee have submitted the Audit Report for the F.Y.2014-15, 2015-16 and 2016-17 issued by U. P. Bhavsar, Partner M.No.43559 of Kishan M. Mehta & Co, Chartered Accountants, Firm's Registration No.105229W under Section 44AB of the Income Tax Act,1961 in respect of M/s. Niravkumar Arvindkumar, Proprietor of Live Travel . Sr.No.10a of the Form No.3CD shows the nature of business or profession as Dealing in travel, tour and other related services. From the above it is established that the assessee were providing services as travel agents, tour operator and other taxable services.

25. I find that assessee has filed the ST3 return for the period 2014-15, 2015-16, 2016-17 & for F.Y.2017-18 (upto June,2017) and paid the Service Tax. Hence, no case of short payment of Service Tax can be made against the assessee on the basis of charges leveled against the assessee in the SCN issued.

26. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments that they had paid the due and legitimate service tax on services provided by them. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically due to the gross income shown in their ITR as discussed hereinabove, which was not shown in ST-3 Returns. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

27. In view of the facts and circumstances pertaining to the case, the demand is not

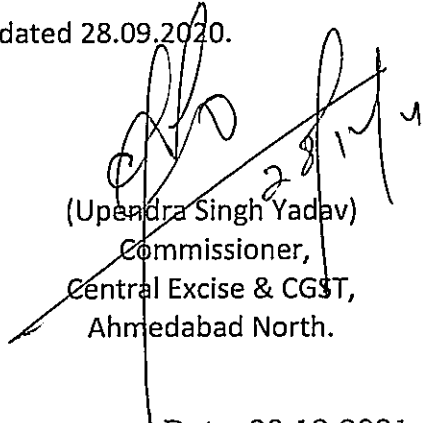
tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into



discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I drop the proceedings initiated against M/s Live Travel Services, situated at GF-4, Devbhumi Shopping Centre, Nr. Archita Flat, Nr. Vijay Cross Road, Navrangpura, Ahmedabad-380 009, vide Show Cause Notice F. No. STC/15-52/OA/2020 dated 28.09.2020.


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

By Regd. Post AD./Hand Delivery
F. No. STC/15-52/OA/2020

Date: 28.12.2021.

To
M/s Live Travel Services,
GF-4, Devbhumi Shopping Centre,
Nr. Archita Flat,
Nr. Vijay Cross Road,
Navrangpura,
Ahmedabad-380 009.

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-V, Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File.

