


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p><b>GST</b> ONE NATION...ONE TAX...ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. STC/15-141/OA/2020

DIN- 20220964WT000000B193

आदेश की तारीख/Date of Order :- 30.09.2022  
जारी करने की तारीख/Date of Issue :- 30.09.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 46/JC/ LD /2022-23**

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pré deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

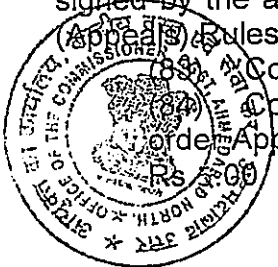
(83) उक्त अपील की प्रति।

(84) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise Rules, 2001. It should be accompanied with the following:

Copy of accompanied Appeal.

Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of



विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. STC/15-141/OA/2020 dated 21.10.2020 issued to M/s Chirag Sunrise Restaurant (Queens), 1,2,24 & 25 Highway Mall, Mehsana Highway, Chndkheda, Ahmedabad, Gujarat-382424.



## BRIEF FACTS OF THE CASE

M/s. Chirag Sunrise Restaurant (Queens), 1, 2, 24 & 25 Highway Mall, Mehsana Highway, Chandkheda, Ahmedabad - 382424. (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AFXPP7291QSD001.

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 22AS) for the Financial year 2015-16. On scrutiny of the above data, it was noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2015-2016 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)								
S r N o	F. Y.	Sales/Gross Receipts from Services (Value from ITR)	Gross Value of Services provided (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	VALUE DIFFERENCE in ITR and STR	VALUE DIFFERENCE in TDS and STR	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	56520250	2907359	0	53612891	-2907359	53612891	7773869

3. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form: 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the Financial Year 2015-16, Letters dated 07.01.2020 were issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department.

4. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assessee has been ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service tax liability under Section 67 of the Finance Act, 1994. No data was forwarded by CBDT, for the period 2016-17 to 2017-18 (upto June-2017) and the assessee has also failed to provide any information regarding rendering of taxable service for this period. Therefore, at this stage, at the time of issue of SCN, it is not possible to quantify short payment of Service Tax, if any, for the period 2016-17 to 2017-18 (upto June-2017).

With respect to issuance of unquantified demand at the time of issuance Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the New Delhi clarifies 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.'*

6. From the data received from CBDT, it appears that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17 to 2017-18 (upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the year 2016-17 to 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will 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 2016-17 to 2017-18 (upto June-2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

7. The government has from the very beginning placed full trust on the service provider so far service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable service provider is not required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Service tax. All these operate on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the service provider, no matter how innocently. From the evidence, it appears that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appears to have made deliberate efforts to suppress the value of taxable service to the department and appears to have not paid the liable service tax in utter disregard to the requirements of law and breach of trust deposited on them. Such outright act in defiance of law, appear to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

8. In light of the facts discussed here-in-above and the material evidences available on records, it was revealed that the assessee, M/s.CHIRAG SUNRISE RESTAURANT (QUEENS), have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

(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 as discussed above;

(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 2015-16.

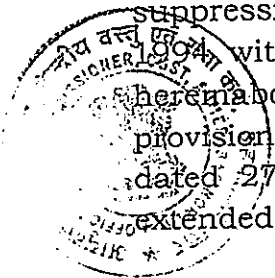
(iv) All the above acts of contravention on the part of the said assessee appear to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid is required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years.

(v) 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 appears to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time.

(vi) The said assessee is 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.

(vii) 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 has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-2016. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 77,73,869/- (including Cess). It appears that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under



the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

10. Accordingly Show Cause Notice was issued to M/s. Chirag Sunrise Restaurant (Queens) called upon to show cause as to why :

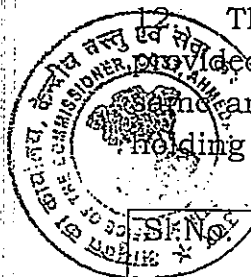
- (i) The Service Tax to the extent of Rs. 7773869/- short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service Tax liability not paid during the financial year 2016-17 to 2017-18 (upto June-2017), 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 under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1)(c) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

#### DEFENCE REPLY

11. The said assessee submitted the reply to SCN on 11.02.2022 wherein they stated that they are engaged in the business of restaurant services and the same was chargeable to full rate of duty on 40% of the total value including goods and services as provided in Rule 2C of the Service Tax Determination of Value) Rules, 2006 which resulted into an effective rate of 4.944% to 5.80% during the period under consideration. They have allotted service tax Reg.No.AFXPP7291QD001. They have also given an immovable property on lease of which they have not taken any registration and on which service tax was remained to be discharged. The value of renting of immovable property services provided during the year under consideration on which they have not collected and deposited any service tax. It was a bonafide mistake from their part and they are making voluntary disclosure of the same vide this submission.

The assessee further submitted that during the period they have provided Restaurant Services of Rs.29,07,359/- and paid service tax on the same and also filed ST 3 returns. The said assessee submitted that they are holding 5 bank accounts the details are as under:

Sr.No.	Name of Bank	Bank Account No.	Nature of account
01	Axis Bank	913020023004411	Business
02	Kotak Bank	1311455022	Business
03	Indsind Bank	201000158131	personnel
04	Punjab National Bank	0971000101157455	Personnel
05	Punjab National Bank	0971002100025065	Personnel



13. Out of the above 5 bank accounts, 3 accounts mentioned at Sl.No.3 to 5 were personnel bank accounts and were not related to business whatsoever. However while filing ITR, the consultant wrongly considered receipts of other 3 personnel accounts also and details of how consultant derived sale of services in the ITR is as below.

Sl.No	Particulars	Basis taken by consultant	Amt.(Rs.)
1	Restaurant Income	STR	29,07,359
2	Total receipts from the bank accounts mentioned at Sl.No.3 to 5	Bank statements	5,19,24,451
3	Agriculture Income	Cash Book	16,88,440
4	Total(Shown in income tax return)		5,65,20,250

14. As the assessee was not maintaining complete set of books of accounts, the consultant without applying his mind wrongly added total receipt side of 3 personnel bank accounts and an agricultural income to the restaurant income as above. It was further submitted that in respect of difference amount of Rs.5,36,12,891/- as above there was no provision of service. They have submitted the source/bank bifurcation of difference of Rs.5,36,12,891/- as below.

Summary of difference (source/bankwise)

Sl.No.	Name of Bank	Bank A/c No.	Amt (Rs)	Remarks
01	Indsind Bank	201000158131	51,23,000	Total of receipt side
02	Punjab National Bank	0971000101157455	1,40,76,651	do
03	Punjab National Bank	0971002100025065	3,27,24,800	do
04	Agriculture income	Cash	16,88,440	Agricultural income
		Total	5,36,12,891	

They further submitted the summary of difference ( Nature of transaction wise)

Sl.No.	Nature of Transaction	Amt.(Rs.)	Remarks
01	Receipt of loan	47432000	Out of the ambit of charging section 66 B read with Section 2(44) of finance Act, 1994 as there is no provision of service
02	Misc. receipt of personnel nature	98380	
03	Receipt of green house subsidy	1636782	
04	Cash Deposit	629000	
05	Transfer from PNB 5065 Bank account	2050000	
06	Savings Bank interest	78289	
	Agriculture income	1688440	
	Total	53612891	

They have also submitted copies of declaration alongwith copy of PAN the parties from whom the loan of Rs.4,74,32,000/- were received as



above stating that they had merely advanced the money to the assessee as a loan only and never received any service against the same and also no TDS was deducted on the same. Therefore there was no provision of service in respect of above receipts, it was a gross neglect of their consultant while filing income tax return. They further submitted that Section 66B governs the levy of service tax and the same is reproduced as below.

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

*Therefore for chargeability under section 66B of Finance Act, 1994 there has to be a provision of service as per section 2(44) of the Finance Act, 1994 which is as under*

*(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include— (a) an activity which constitutes merely,—*

*(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*

*(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*

*(iii) a transaction in money or actionable claim;*

Therefore as the above transaction of Rs.5,36,12,891/- are merely transactions in money only and thereby service tax cannot be demanded on the same. They also relied upon following case laws in support of their claim.

- Association of Leasing and financial service companies Vs Union of India reported on 2010(20)STR 417(SC)
- Futura Polyester Ltd Vs Commissioner of Central Excise (CESTAT Chennai)
- Ruchi Soya Industries Ltd Vs. Commissioner of Customs (CESTAT DELHI)

Hence in this case there was no provision of service in respect of the amount of Rs.5,36,12,891/- wrongly shown as sale of service in the ITR as explained above. They have further contended as to why amount of Rs.5,36,12,891/- shall not be considered as restaurant income.

16. They have received loan of Rs.4,74,32,000/- in 20-22 installments only. The same can be seen from the annexure 4.1 to 4.3 to the submission. Further, many of the receipts were more than 50 lacs on a single day which is not possible in restaurant business. He was running a small restaurant and even Rs.50 lacs a year even could not be possible for the size of restaurant he had. Therefore it was nothing but unsecured loans

They have received loan of Rs.4,74,32,000/- during the period under consideration. Also they have received another Rs.58,24,000/- from the said parties till 31.03.2019 totaling to Rs.5,32,56,000/- It is pertinent to note that the assessee has repaid the loan to the tune of RS.97,31,000/- during the period under consideration and additionally another Rs.1,94,96,000/- were repaid towards receipt of above loan amount totaling to Rs.2,92,27,000/- i.e. approx. 60% of the loan already paid by them. If it would have been the restaurant income then there would not have been any repayment against the same. As the assessee repaid major part of the loans, it proves that they had





received repayable loans only and there was no colour of service in the receipt of Rs.4,74,32,000/-.

18. They have applied the above funds into investments in mutual funds, life insurance policies, cash deposits, repayment of loan etc. If it would have been an income then there must be expense also. However, there was no a major expense against these funds. Copy of bank books for 3 personnel accounts are attached. Further if it would have been an income then TDS would have been deducted on the same. However, the same is not the case with him. There were no TDS on the difference receipt of RS.5,36,12,891/- amount which can be verified on the basis of the Form 26AS submitted.

19. They have also submitted declarations from payers of unsecured loan confirming the no service was provided by them as well as no payment was done against provisions of service. It were merely transaction of loans only. Therefore it was requested to allow the clerical neglect of the consultant in showing other amounts as sale of service being not leviable to service tax and drop the impugned SCN.

#### PERSONNEL HEARING

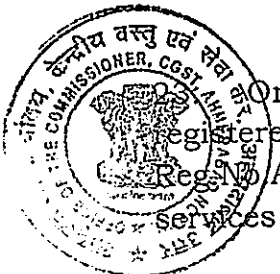
20. Personnel Hearing in the instant case has been granted on 22.09.2022 and Shri Ankit Chokshi CA and Shri Virag Kabadia, partners of Ankit Chokshi & Co, Chartered Accountants and duly authorised representative attended the P.H on behalf of the said assessee and reiterated their written submissions dated NIL received on 16.02.2022 and they requested to decide the matter on merit.

#### DISCUSSION AND FINDINGS

21. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further

22. I have carefully gone through the SCN, Reply to the show cause notice, Form 26AS, ITR, ST-3 Returns, Balance sheet for the year 2015-16. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.77,73,869/- for the financial year 2015-16 on the basis of data received from Income Tax authorities and finding that the noticee had obtained Service Tax registration and also filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. 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 Rs. 5,36,12,891/- for the financial year 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

On perusal of the above documents, I find that the assessee are registered with Service Tax Department and are having Reg. No. AFXPP7291QSD001. They are engaged in the business of restaurant services and the same was chargeable to full rate of duty on 40% of the total



value including goods and services as provided in Rule 20 of the Service Tax Determination of Value) Rules, 2006 which resulted into an effective rate of 4.944% to 5.80% during the period under consideration by availing benefit of NOT.No.024/2012-ST.

24. Before going to the taxability of Rs.5,36,12,891/-, I would like go through the legal aspects of the chargeability of Service tax. Section 66B defined the charging section for service tax which reads as under:

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

For chargeability under section 66B of Finance Act, 1994 there has to be a provision of service as per section 2(44) of the Finance Act, 1994 which is as under

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include— (a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

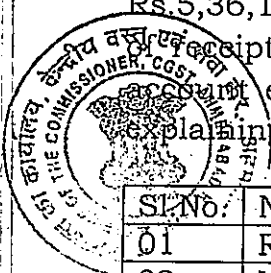
**(iii) a transaction in money or actionable claim;**

25. On perusal of charging section and also definition of service, I find that service means any activity carried out by a person for another for consideration but a transaction in money or actionable claim is excluded from the definition of service. Further on the point of non payment of service tax on Rs.5,36,12,891/-is concerned, I find that the assessee submitted that transaction of this income is done from the following personnel bank accounts.

Sl.No.	Name of Bank	Bank A/c No.	Amt (Rs)	Remarks
01	Indsind Bank	201000158131	51,23,000	Total of receipt side
02	Punjab National Bank	0971000101157455	1,40,76,651	do
03	Punjab National Bank	0971002100025065	3,27,24,800	do
04	Agriculture income	Cash	16,88,440	Agricultural income
		Total	5,36,12,891	

26. On perusal of the SCN and other documents, I find that the demand notice has been issued to recover Rs.77,73,869/- on the differential value of Rs.5,36,12,891/-. In this connection, they stated that the difference consists receipt of loan, receipt of green house subsidy, transfer from other bank account etc. They have provided the details of various financial transaction explaining the said difference. (Nature of transaction wise)

Sl.No.	Nature of Transaction	Amt.(Rs.)
01	Receipt of loan	47432000
02	Misc.receipt of personnel nature	98380
03	Receipt of green house subsidy	1636782
04	Cash Deposit	629000
05	Transfer from PNB 5065 Bank	2050000



	account	
06	Savings Bank interest	78289
07	Agriculture income	1688440
	Total	53612891

27. On perusal of the books of accounts and from the bank statement and ledger account of the assessee, I find that during the period from 01.04.2015 to 31.03.2016 the assessee has unsecured loan of Rs.4,74,32,000/- on the credit side of their ledger account. These loans are obtained from 8 different persons. They have produced the ledger accounts, copies of bank statements and copies of PAN of all the 8 persons. They claimed that these are loans obtained from other persons and there is no element of service in it. All the 8 persons have also submitted declaration of non receipt of any service wherein they submitted the details of loan given to Ms.Damyanti Premal (Proprietor) alongwith a declaration that they have not received any service whatsoever from her in any capacity not have made payment towards any receipt of services. The funds are given as a loan only and did not amount income or expense. I have gone through the documents, ledger accounts, copies of bank statements and PAN of all the 8 creditors and find that no service element is involved in these transactions. It has also been seen that part of these loans have been repaid by the assessee also. On perusal of the ledger account of the various bank accounts of the assessee, I find that these transactions are reflected in their ledger also. I also find that the total loan of Rs.4,74,32,000/- is procured by the assessee in 20-22 installments only. On perusal of the transactions, I find that these loans have been used by the assessee to invest in mutual funds.

28. From the above, I find that proprietor of the assessee firm received loan of Rs.4,74,32,000/- from various persons in her personnel capacity and as this is purely a transaction of money only and not involved any content of service, hence the same cannot be considered as a service and accordingly no service tax can be charged on the loan amount of Rs. 4,74,32,000/-. I have gone through the copies of ledger, declaration, PAN, bank accounts and find that these are only money transaction in the form of loan and accordingly does not fall under the definition of service and accordingly not a chargeable service as per Section 66B of Finance Act, 1994.

29. Further on perusal of the documents, I find that following transactions were also made through the account of Ms.Damyanti Premal, proprietor.

Misc. receipt of personnel nature	98380
Receipt of green house subsidy	1636782
Cash Deposit	629000
Transfer from PNB 5065 Bank account	2050000
Savings Bank interest	78289
Agriculture income	1688440
Total	6180891



30. I have also verified the ledger account, profit and loss account and copies of bank statement of A/c.No. 201000158131 of Indsind bank, 0971000101157455 of Punjab National Bank and A/c. No.0971002100025065 of Punjab National Bank

wherein the entries of Misc. receipt of personnel nature, Receipt of green house subsidy, Cash Deposit, Transfer from PNB 5065 Bank account, and Savings Bank interest of the assessee and found that these are also transaction in the capacity of individual and no element of service is involved in any of these transactions. Further an income of Rs.61,80,891/- is reflected in their profit and loss account under the head agricultural income. Neither the Show Cause Notice nor the documents submitted by the assessee gave any light in the matter that these payment are received on behalf of any service provided by the assessee to other. The income derived from the transactions such as misc. receipt of personnel nature, receipt of greenhouse subsidy, direct cash deposit, transfer from PNB bank account, savings bank interest and agricultural income have no service element. The SCN or related documents does not provide any material to prove that the any service element is involved in these transactions. Hence from the nature of transactions and records available, I find that these are only financial transactions without any service element and therefore not fall under the definition of service as envisaged under the definition of service as defined under Finance Act, 1994. In view of the above, I find that the differential value of Rs. 5,36,12,891/- is the income earned by way of loan and other financial transactions which are not fall under the definition of service as envisaged clause (iii) of Section 44 as defined and therefore the same is not taxable under service tax.

31. Further I have gone through the Balance sheet/profit & loss account of the assessee wherein it was stated that the total sales accounts comes to Rs.29,07,359.73 whereas they have declared Rs.29,07,359/- under the Head gross receipt in their ST 3 return and they have paid appropriate service tax on the same amount also. I have also gone through the Form 26AS for the F.Y 2015-16, wherein it was mentioned as "No Transaction Present" under the heading details of "Tax Deducted at Source" which implies that no activity has been undertaken by the assessee which requires TDS deduction as no TDS has been deducted from the assessee. In view of the above the service tax demand of Rs.77,73,869/- is not sustainable and therefore the same is liable to be dropped.

32. Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 2016-17 & 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2016-17 & 2017-18 (Up to June 2017), in charging para of the SCN, hence I refrain from discussing the taxability of any income for the period 2016-17 & 2017-18 (upto June 2017). On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the sales/gross receipts from services (value from ITR). I therefore refrain from discussing the taxability on other income other than the sales/gross receipts from services (value from ITR).

33. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect

company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is also onus upon assessee to verify and make a report on 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. The assessee have given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of incomes under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

34. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, Balance Sheet, Profit & Loss account, ITR, reconciliation statement, Copies of STR, Form 26AS, ledger accounts and reconciliation statement, I find that the service tax demand of Rs. 77,73,869/- for the FY 2015-16 is not sustainable and accordingly Show Cause Notice No.STC/15-141/OA/2020 dated 21.10.2020 is liable to be dropped. Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon assessee on this count. Accordingly, I pass the following order;

35. In view of the above discussion and findings, I pass the following orders:-

### ORDER

36. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 77,73,869/- each along with interest and penalties against M/s.Chirag Sunrise Restaurant vide SCNs No.STC/15-141/OA/2020 Dated 22.10.2020.



(Lokesh Dāmor)

Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North

Date:

F.No. STC/15-141/OA/2020

To,  
M/s.Chirag Sunrise Restaurant (Queens),  
1,2,24 & 25 Highway Mall,  
Mehsana Highway, Chandkheda,  
Ahmedabad -

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- 2) The DC/A.C, Central GST & Central Excise, Division-VII, Ahmedabad North.
- 3) The Supdt., C GST & C. Excise, Range-II, Division-VII, Ahmedabad North
- ✓ 4) The Supdt. Systems, CGST & CX, Ahmedabad North for uploading the order
- 5) Guard File.