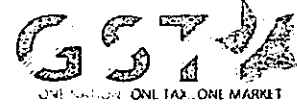


आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा, अहमदाबाद- 380009



OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220364WT000000FE08

फा.सं./F.No. STC/15-103/OA/2020

आदेश की तारीख/Date of Order :- 30-03-2022

जारी करने की तारीख/Date of Issue :- 30-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम *IR Gulzar Begum*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 115/ADC/ GB /2021-22

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 -4 (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 pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (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।

(1) उक्त अपील की प्रति।

(2) 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 -4 (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) 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 Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No.GEXCOM/ADJN/ST/ADC/304/2020 dated 08.12.2020 issued to M/s Jiya Travel Hub Pvt Ltd., Shop No. TF-5, 305, Swapnil Complex, Second floor, Naranpura, Ahmedabad.



BRIEF FACTS OF THE CASE :

M/s. Jiya Travel Hub Pvt. Ltd, Shop.No.-TF-5,305, Swapnil Complex, Second Floor, Nr.Sardar Patel Colony, Naranpura, Ahmedabad, Gujarat (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AAD CJ3355RSD001 and are engaged in the business of providing Taxable Services.

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 26AS) for the Financial year 2015-16 and 2016-17. 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 and 2016-17 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.)

Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	29628958	8860208	0	20768750	3011469
2.	2016-17	16824636	40034224	0	23209588	3481438
	Total					6492907

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 & 2016-17, letter dated 07.10.2020 was 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. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16 & 2016-17, 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.

4. As no data was forwarded by CBDT, for the period 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 was not possible to quantify short payment of Service Tax, if any, for the period to 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, 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.'

5. From the data received from CBDT, it was found that 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) 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 letter and summons from the Department. Therefore, the assessable value for the year 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 2017-18 (upto June-2017) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. 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.

7. In light of the facts discussed here-in-above and the material evidences available on records, it was revealed that the assessee, M/s.JIYA TRAVEL HUB PRIVATE LIMITED, 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 & 2016-17.

(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 publishable 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.

8. The above said service tax liabilities of the assessee, M/s JIYA TRAVEL HUB PRIVATE LIMITED, has been worked out on the basis of limited data/ information received from the Income tax department for the financial year 2015-16 and 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department. 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 2015-16 to 2016-2017. From the evidences, it was found 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. 64,92,907/- (including Cess). It was found 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, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same was 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.

9. Accordingly Show Cause Notice was issued to M/s. JIYA TRAVEL HUB PRIVATE LIMITED called upon to show cause as to why:

- (i) The Service Tax to the extent of Rs. 6492907/- 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 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 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

10. The assessee has submitted their defence reply on 4.12.2020 & 29.12.2020 wherein they attach Copy of Income Tax returns, 26AS, Vat/Sales Tax returns, copies of sample invoices, copy of balance sheet alongwith Profit and loss account and ST-3 returns for the year 2015-16 and 2016-17. They further submitted that the difference between taxable value as per ST 3 returns and amount as per Income Tax Return is due to abatement provided to tour operator service provider from time to time. They have taken Service Tax Registration No.AADCJ3355RSD001 under Air Travel Agent Services, Business Auxiliary Services and Tour Operator Service. They have discharged their service tax liabilities under Air Travel Agent Services on handling charges, Tour Operator Services on Tour Package Income after claiming abatement as per Noti.No.026/2012-ST and 08/2016, Tour operator services on Hotel Booking Income after availing abatement under Noti.No.26/2012,08/2016 and 04/2017 and copies of the same were also provided by them. They have discharged all service tax liability. They have not suppressed any fact, as they filed ST 3 returns from time to time by declaring full value of services, taking abatement under various Notifications. They have also filed further submissions vide letter dated 25.01.2022 at the time of Personnel Hearing wherein they submitted that as an Air Travel Agent Service provider, they have received value from their customer for purchase of air ticket(which they have sold to them) and handling charges (i.e. their service charge) on such air ticket. The difference arises between ITR and STR was solely due the exclusion of value of air ticket (reimbursement of air ticket) in service tax return. They have complied with the conditions mentioned under Service Tax (Determination of Value) Rules, 2006 as per Rule 5(2) for paying service tax only on handling charges and excluding value of reimbursement.

11. They further contended that during the FY 2015-16 total Gross Value provided (STR) was Rs.88,60,208/- and as per sale of services (ITR) was Rs.2,96,28,958/-. The difference between the both of Rs.2,07,68,750/- was due to the service provided by them as an Air Travel Agent Service Provider. They have shown only Handling charges Income in their STR. But purchase of Air Ticket and selling the same to the client amount has not been taken in the total value of services provided in STR. Therefore the difference was arises. The total turnover as per ITR including sale of air tickets (contains element of reimbursement of air ticket from the customer) and handling charges income whereas in STR it contains only handling charges. They further submitted that as per the audited financial statement of FY 2015-16 total value of selling Air Tickets is Rs.2,14,94,250/- which includes reimbursement of expenditure as a pure agent of Rs.2,07,68,750/- and remaining amount was of handling charges income on which service tax was payable was Rs.8,70,846/-

12. During the year 2016-17 sale of services amounting to Rs.4,00,34,224/- (of which tour package income and hotel booking charges income was of Rs.1,59,36,814/- and remaining income was reimbursement of air ticket) and handling charges of Rs.8,58,042/-. In service tax returns, tour package income and hotel booking charges income of Rs.59,67,203/- and handling income have been shown as Rs.8,57,433/-. So the difference was due to the reason mentioned for the FY 2015-16 difference. From the above explanation and documentary evidences it very much clear that the difference was arises due to the exclusion of values of purchase and sale of air tickets).

PERSONNEL HEARING

13. In the instant case Personal Hearing was granted to the noticee on 27.01.2022. Shri Ashish Patel, Managing Director appeared for personnel hearing. He submitted that his firm work under "Pure Agent" concept and the air ticket fare shown is not liable for service tax.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the records of the case, submission made by the noticee, Audited Balance Sheet, ITR, STR and copies of invoices for the year 2015-16 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 64,92,907/- for the financial year 2015-16 to 2016-17 on the basis of data received from Income Tax authorities. 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. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs.64,92,907/ on the differential taxable value of Rs. 4,39,78,338/-/- for the financial year 2015-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

15. In the instant case, in their reply to SCN, the said assessee submitted that as an Air Travel Agent Service provider, they have received value from their customer for purchase of air ticket (which they have sold to them) and handling charges (i.e. their service charge) on such air ticket. The difference arises between ITR and STR was solely due the exclusion of value of air ticket (reimbursement of air ticket) in service tax return. In the instant case, 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;

In view of the above, the airfare collected by air travel agent in respect of services i.e. booking of air ticket, provided by them is excluded from the purview of service tax

16. Further the assessee claimed that they have complied with the conditions mentioned under Service Tax (Determination of Value) Rules, 2006 as per Rule 5(2) for paying service tax only on handling charges and excluding value of reimbursement. On perusal of the records, I find that the assessee were also providing the service for hotel booking charges and tour package income 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."

According to which, 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.

17. On perusal of records and submissions, I find that the assessee is providing services of tour operator and hotel booking services and 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. On perusal of the records, I find that the said assessee had correctly 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.

18. I find that the 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. On going through the Profit & Loss Account of audit report, I find that in Profit and Loss Account of F.Y. 2015-16 Revenue from operations is Rs.2,96,28,958/- 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. On perusal of Profit & Loss Account of audit report, F.Y. 2016-17, I find that the Revenue from operations is shown as Rs.4,08,92,266/-. However an amount of Rs.4,00,34,224/- 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 is less than the revenue shown in Profit & Loss account for the 2016-17 and therefore I take the income of Rs.4,08,92,266/- shown in the Balance sheet as the revenue as the same is on the higher side.

20. The assessee have provided a number of copies of invoices which shows the service tax charged 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.

21. On perusal of audited balance sheet and other related documents of F.Y.2015-16, I find that the assessee have total income of Rs. 2,16,39,596/- as income from sale of air tickets including reimbursement of air ticket out of the total income of Rs. 2,96,28,958/-. Out of sale of air ticket income of

Rs.2,16,39,596/- they have reimbursed Rs.2,07,68,750/- for air tickets as a pure agents and they have paid service tax on differential amount of Rs.8,70,846/- as handling charges. Further they have also paid service tax on hotel booking charges of Rs.40,23,558/- and Tour Package income of Rs.39,65,803/- on and filed ST 3 return accordingly for the year 2015-16. Hence I find that the reimbursable amount of Rs.2,07,68,750/- is excluded from taxable in view of Rule 6(2)(ii) of the Service Tax (determination of Value) Rules, 2006 and accordingly the same is not taxable and therefore the service tax of Rs.30,11,469/- demanded for the year 2015-16 is not sustainable and therefore liable to be dropped.

22. Similarly on perusal of audited balance sheet and other related documents of F.Y.2016-17, I find that the assessee have total income of Rs. 2,49,55,452/- as income from sale of air tickets including reimbursement of air ticket out of the total income of Rs. 4,08,92,266/-. Out of sale of air ticket income of Rs. 2,49,55,452/- they have reimbursed Rs.2,40,97,410/- for air tickets as a pure agents and they have paid service tax on differential amount of Rs.8,58,042/- as handling charges. Further they have also paid service tax on hotel booking charges of Rs.1,45,49,727/- and Tour Package income of RS.13,87,087/- on which they have paid service tax and filed ST 3 return accordingly for the year 2016-17. Hence I find that the reimbursable amount of Rs.2,40,97,410/- is excluded from taxable as per rule 6(2)(ii) of the Service Tax (determination of Value) Rules,2006 and therefore the same is not taxable and accordingly the service tax of Rs.34,81,438/- demanded is not sustainable for the year 2016-17 and therefore liable to be dropped. For the sake of clarity, the consolidated worksheet are tabulated and reconciled as under:

Description	2015-16	2016-17
Total income as per ITR and SCN as discussed	29628958	40892266
Total income declared as per ST3	8860208	16824636
Differential value on which service tax as per SCN	20768750	24067630
Reimbursement of air ticket as discussed	20768750	24097410
Difference	0	(-)29780

23. On perusal of the above reconciliation and records, I find that the assessee is entitled for the benefit of deduction of reimbursed air fare as a pure agent and accordingly they are not liable to pay any service tax on the said amount. I find that assessee has filed the ST3 return for the period 2015-16 & 2016-17 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 levelled against the assessee in the SCN issued. 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.

24. Further, on perusal of paras 6,7 & 8 of SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he 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, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges levelled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from GTA . I therefore refrain from discussing the taxability on other income other than GTA income.

25. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR , reconciliation statement, I find that the service tax demand of Rs. 64,92,907/- for the period 2015-16 to 2016-17 is not sustainable and accordingly Show Cause Notice F.No.GEXCOM/ADJN/ST/ADC/304/2020-ADJAN dated 09.12.2020 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;

ORDER

26. I hereby order to drop proceedings initiated for recovery of service tax of Rs.64,92,907/- along with interest and penalties vide SCN No. F.No.GEXCOM/ADJN/ST/ADC/304/2020-ADJAN dated 09.12.2020

R. Gulzar Begum
26/3/20

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

Dated 26/3/20

F.No. STC/15-103/OA/2020

M/s. Jiya Travel Hub Pvt. Ltd,
Shop.No.-TF-5,305, Swapnil Complex,
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Naranpura, Ahmedabad, Gujarat
Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
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