



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

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निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-95/OA/2020

आदेश की तारीख/Date of Order:-31.03.2022

जारी करने की तारीख/Date of Issue :- 31.03.2022

DIN NO: 20220364WT00005505F7

द्वारा पारित/Passed by:-

आर गुलजार बेगम IR. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 124/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-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायानय 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. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-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 रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 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.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No. STC/15-95/OA/2020 dated 29.09.2020 issued to M/s Ayushi Air Travels situated at Swastik House, 14, 1st Floor, Nr. Income Tax railway Crossing, Narangpura, Ahmedabad.

BRIEF FACTS OF THE CASE

M/s.Ayushi Air Travels, situated at Swastik House, 14, 1st Floor, Nt.Income Tax Railway Crossing, Navrangpura, Ahmedabad (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ADRPV8930GST001.

2. On going through the third party CBDT data for the Financial Year 2014-2015 to 2016-17, it has been observed that the Assessee has declared less/ not declared any taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/ Form 26AS, the details of difference as per CBDT data for the Financial Year 2014-2015 to 2016-17 are as under:

(Amount in Rs.)

F.Y.	Value As per B/S, P&L, Form 26AS of ITR	Value declared in ST-3 Returns	Differential amount	Service tax payable (including cess)
2014-15	24671900/-	12309814/-	12362086/-	1527954/-
2015-16	10357396/-	2941186/-	7416210/-	1075350/-
2016-17	51840555/-	2760114/-	49080441/-	7362066/-
TOTAL				9965370/-

3. The clarification along with documents were called for from the assessee for assessment purpose, vide letter F.No. STC/Prev/Gr-I/TPD-/2017-18 dated 12.02.2018 followed by Reminders dated 03.05.2018, 30.07.2019 and 13.07.2020. The assessee neither submitted the documents nor extended the co-operation in the matter although sufficient time was provided. This act of non-co-operation of assessee has contravened the provisions of Section 72 of the Finance Act, 1994 has rendered themselves liable for penal action under Section 77 of Finance Act, 1994.

4. Hence, it was found that the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.9965370/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. It has also 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 2014-2015 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. 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.9965370/-. 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 appeared to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Accordingly Show Cause Notice was issued to M/s.Ayushi Air Travels, called upon to show cause as to why :

- (i) The demand for Service tax to the extent of Rs.9965370/- (Rupees Ninty Nine Lakh Sixty Five Thousand Three Hundred Seventy Only) 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;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty of Rs.10,000/- (Rupees Ten thousand only) should not be imposed under Section 77 of the Finance Act, 1994.

DEFENCE REPLY

7. The assessee vide letter dated Nil 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.

8. 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 COMM. OF C. EX., MYSORE
- 2010 (20) S.T.R. 789 (Tri. - Mumbai) ANVIL CAPITAL MANAGEMENT (P) LTD. Versus COMM. 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

9. The assessee have further submitted that SCN covers the period from 01.04.2014 to 31.03.2017 and SCN had been issued on 29.09.2020, 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.

10. 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 2011(21)STR500(Guj).

11. 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.

PERSONAL HEARING:

12. Personal Hearing was granted to the noticee on 25.01.2022. Shri Vipul Khandar, Chartered Accountant, appeared for personal hearing on behalf the assessee. They referred to the written reply of the noticee tendered. They submitted additional submission, documents i.e audited balance sheet, copies of STR, ledger accounts and reconciliation statement etc in support of their claim. 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.

DISCUSSION AND FINDINGS

13. 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 2014-15 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 99,65,370/- for the financial year 2014-15 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. 99,65,370/- for the financial year 2014-15 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

14. I find that the assessee in their reply 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. The assessee have submitted that they were providing the following services i.e. Air Travel Agent Service, Business Auxiliary Services, Tour Operator Service. They have submitted the reconciliation for F.Y.2014-15, 2015-16, 2016-17.

15. On perusal of the reply to the SCN and reconciliation statement submitted by the assessee alongwith the reply to SCN, I find that the assessee are providing Air Travel Agent Services, Business Auxiliary services and Tour package services for which registered with Service tax paid service tax and file ST 3 return accordingly. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as "**service**" means any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,

- (a) Service by the Government/Local Authority
- (b) Service by RBI
- (c) Service by Foreign Diplomatic Mission located in India
- (d) Service in relation to agriculture
- (e) Trading of goods
- (f) Manufacture of goods

- (g) *Selling of space/time for advertisement*
- (h) *Services by access to road or bridge on a payment of Toll charges*
- (i) *Betting, gambling or lottery*
- (j) *Admission to Entertainment Events & Amusement Facilities*
- (k) *Transmission or distribution of electricity*
- (l) *Educational Services*
- (m) *Renting of Residential dwelling for use as residence*
- (n) *Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
- (o) *Transportation of Passenger with or without accompanied belongings*
- (p) *Transportation of goods.*
- (q) *Mortuary/Funeral services*

16. In view of the above, I find that the activities carried out by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of various taxable services provided for the period 2014-15 to 2016-17.

17. In the instant case the assessee was providing Air Travel Agency Services, Business Auxiliary services and Tour Package services. In reply to SCN, they have stated that while doing the reconciliation of income with books of accounts, the department has not taken into factual details and without considering the factual details, the department has raised the demand which is not justifiable at all.

18. 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

19. 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.

20. 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.

21. 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.

22. On perusal of audited balance sheet, ledger account, ST 3 Return and other related documents of F.Y.2014-15, I find that the assessee have total income of Rs. 2,46,71,900/- as income from sale of tour packages service, air tickets booking amount both domestic and international including reimbursed amount of Rs. 2,46,71,900/-. Out of total sales/income of Rs. 2,46,71,900/- they have shown Rs.1,23,09,814/- as their taxable value in the STR. The differential amount is Rs.1,23,62,086/- is reimbursed value/abatement which they have not shown in their ST3. As the said amount is reimbursable/abatement in nature, hence I find that the reimbursable amount/abatement of Rs. 1,23,62,086/- is excluded from taxable in view of Rule 6(2)(ii) of the Service Tax (determination of Value) Rules, 2006 and Rule 5(2) of Service Tax (determination of Value) Rules, and accordingly the same is not taxable and therefore the service tax of Rs.15,27,954/- demanded for the year 2014-15 is not sustainable and therefore liable to be dropped.

23. On perusal of SCN, audited balance sheet, ledger account, ST 3 Return and other related documents of F.Y.2015-16, I find that the value shown in SCN is Rs.1,03,57,396/- however on perusal of audited Balance sheet, I find that total income is Rs. 1,38,12,442/-. As the income shown in the audited Balance sheet is on higher side, I consider Rs.1,38,12,442 as the income for the year 2015-16 for adjudication purpose also. On perusal of the balance sheet, ledger accounts and other details, I find that the total income of the assessee is the income from sale of tour packages service, air tickets booking amount both domestic and international including reimbursed amount/abatement of Rs. 1,08,71,256/-. Out of total sales of Rs. 1,38,12,442/- they have shown Rs.29,41,186/- as their taxable value in the STR. The differential amount is Rs.74,16,210/- is reimbursed value/abatement and therefore they have not shown in their ST3. As the said amount is reimbursable value and /abatement in nature, hence I find that the said reimbursable amount/abatement of Rs. 74,16,210/- is excluded from taxable in view of Rule 6(2)(ii) of the Service Tax (determination of Value) Rules,

2006 and Rule 5(2) of Service Tax (determination of Value) Rules, and accordingly the same is not taxable and therefore the service tax of Rs.10,75,350/- demanded for the year 2015-16 is not sustainable and therefore liable to be dropped.

24. On perusal of audited balance sheet, ledger account, ST 3 Return and other related documents of F.Y.2016-17, I find that the assessee have total income of Rs. 5,18,40,555/- as income from sale of tour packages service, air tickets booking amount both domestic and international including reimbursed amount/abatement of Rs. 4,90,80,441/-. Out of total sales/income of Rs. 5,18,40,555/- they have declared Rs.27,60,114/- as their taxable value in the STR and paid service tax accordingly. However the differential amount is Rs. 4,90,80,441/- consists of reimbursed value and abatement which they have not shown in their ST3. As the said amount is reimbursable in nature/abatement, hence I find that the reimbursable amount of Rs. 1,23,62,086/- is excluded from taxable in view of Rule 6(2)(ii) of the Service Tax (determination of Value) Rules, 2006 and Rule 5(2) of Service Tax (determination of Value) Rules, and accordingly the same is not taxable and therefore the service tax of Rs.73,62,066/- demanded for the year 2016-17 is not sustainable and therefore liable to be dropped.

25. 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.

26. In view of the above discussion and on perusal of SCN, submissions made by the said assessee, duly audited Balance Sheet, ITR , reconciliati statement, I find that the service tax demand of Rs. 99,65,370/- for the period 2014-15 to 2016-17 is not sustainable and accordingly Show Cause Notice No.STC/15-95/OA/2020 dated 29.12.2020 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

27. 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. STC/15-95/OA/2020 dated 29.12.2020

R. Gulzar Begum
31/12/20

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

F.No. STC/15-95/OA/2020

Dated 31/3/22

M/s.Ayushi Air Travels,
Swastik House, 14, 1st Floor,
Nr.Income Tax Railway Crossing,
Navrangpura, Ahmedabad

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The D.C/A.C, 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.
- ✓ 5. Guard File

