


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

निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-92/OA/2020

आदेश की तारीख/Date of Order: - 19.07.2021
जारी करने की तारीख/Date of Issue :- 19.07.2021

DIN-20210746WT0000333D00

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 14/JC/MT/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 अमन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से दो महिनों के अन्दर आयुक्त (अपील), केन्द्रीयजी.एस.टी., केन्द्रीयजी.एस.टी.भवन, अंवावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एसटी-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 ST-4 to the Commissioner(Appeals), GST Bhawan, Ambawadi, Ahmedabad-380015 within two months 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 की धनराशि का प्रमाण देना आवश्यक है।

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एसटी-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 जाएंगे।

- (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 जिस पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form 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/ The Show Cause Notice No. STC/15-92/OA/2020 dated 29.09.2020 issued to M/s Bhavi Tours & Travels, Rainbow Complex, 8, Near Old High Court Railway Crossing, Navrangpura, Ahmedabad-380009.

Brief Facts of the Case:

M/s Bhavi Tours & Travels, Rainbow Complex, 8, Near Old High Court Railway Crossing, Navrangpura, Ahmedabad-380009 (hereinafter referred to as the 'Assessee') were registered under Service Tax Registration No.AADFB6613PST001 and were engaged in providing "Air Travel agent Services".

2. On going through the third party CBDT data for the Financial Year 2014-2015, 2015-16 and 2016-17 it was observed that there is difference in the value declared in ITR and taxable value declared in their Service Tax Return (ST-3) for the F.Y.2014-2015, 2015-16 and 2016-17 the details of which are as under:

#	F.Y.	Taxable Value of services provided as per ST-3 returns (In Rs.)	Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided or Higher value of Difference Between Total Amount paid/Credited from TDS/ITR and Gross Value in Service Tax Provided, as applicable (In Rs.)	Rate of Service Tax (in%)	Resultant Service Tax short paid, including Cess (in Rs.)
1	2014-15	1,57,15,598/-	1,07,44,310/-	12.36	19,42,448/-
2	2015-16	1,45,74,564/-	1,78,16,498/-	14.50	25,83,393/-
3	2016-17	1,64,25,976/-	1,21,78,843/-	15.00	18,26,827/-
Total		4,67,16,138/-	4,07,39,651/-	###	63,52,668/-

3. The letters dated 13.02.2018, 08.05.2018, 30.09.2019 and 06.07.2020 were issued to the assessee for clarification. But, no clarification was submitted by the assessee. They have not provided any details/data for such difference, the reasons for such difference could not be ascertained and therefore, the exact Service Tax liability could not be adjudged. Therefore, for calculation and demand of the Service Tax under this notice, the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17.

4. Therefore, it appeared 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. 63,52,668/- (Including Cess), 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 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, 2015-16 and 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 appeared 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.63,52,668/-(Including Cess). It appeared 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 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, it appeared that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Therefore, M/s Bhavi Tours & Travels, Rainbow Complex, 8, Near Old High Court Railway Crossing , Navrangpura, Ahmedabad-380009 were called upon to show cause to the Additional/Joint Commissioner, Central GST & Central Excise, Ahmedabad North, as to why :

- (i) The demand for Service tax to the extent of Rs.63,52,668/- (Including Cess) (Rupees Sixty Three Lacs Fifty Two Thousand Six Hundred and Sixty Eight Only) short paid /not paid by them, should not be confirmed 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.

Defence Submission:

7. Vide their letter dated 12.11.2020, the assessee sought one time for submission of the reply to the notice. As they had not filed their reply even after a lapse of almost one month, personal hearing was fixed on 07.06.2021.

Personal Hearing:

8. Shri Nimeshbhai Patel, Partner, along with Shri Harish Mehta, Accountant appeared for the personal hearing. They requested for three weeks time for production/submission of reply to the show cause notice giving reconciliation of income. They had nothing more to add.

Vide their letter dated 29.06.2021 and 14.07.2021, the assessee stated that-

- the income on the basis of Income Tax Return/Form 26AS was wrongly taken.
- extended period can not be taken in this case and the demand is barred by time limit.
- produced calculation sheet on the amount of commission passed on to their vendors.
- stated that the difference is due to the payment of commission to their vendors.
- considering their submission, requested to drop the proceedings.
- Submitted copies of Form 16A to prove that they have passed on the commission to their sub-agent to the tune of Rs.22,41,717/-

Discussion and Findings:

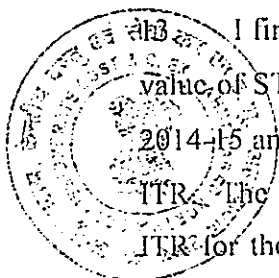
10. I have carefully gone through the records of the case, submission made in reply to the show cause notice and during the personal hearing. In this case, show cause notice was issued to the assessee for difference in the ST-3 value and in the ITR for the year 2014-15, 2015-16 and 2016-17.

11. On going through the show cause notice, I find that during the year 2014-15 and 2016-17 the assessee has shown more value in the ST-3 than the ITR and therefore, the demand raised for short payment of Service Tax is not sustainable. However, I find that during the year 2015-16, the value declared in the ST-3 Return is 1,45,74,564/- whereas in value declared in the ITR is Rs.1,78,16,498/-, thus, there is a difference in the value of Rs.32,41,934/-. Vide their letter dated 14.07.2021, the assessee submitted form 16-A showing that they have passed on commission to the tune of Rs.22,41,717/- to their subagents as detailed below.

1. M/s.The Galaxy Travels	-	Rs. 11,54,143.00
2. M/s.Suvika Travels		RS. 4,26,640.00
3. M/s.Global Connection		<u>Rs. 6,60,934.00</u>
Total	:	Rs. 22,41,717.00

12. One perusal of the document submitted by the assessee, it is noticed that they have paid Rs.22,47,717/- to their sub agents and are deductible from the value of difference sited above. After deducting the commission paid to their sub-agents amounting to Rs.22,41,717/- from the differential amount of Rs.32,41,934/- value of ST-3 and ITR for the year 2015-16, the actual difference comes to Rs.10,00,217/- on which the assessee is liable to pay Service Tax @ 14.5% which comes to Rs.1,45,031/-. They are also liable to pay interest and penalty on the said amount of Service Tax in terms of Finance Act, 1994 and rules made thereunder.

I find that in this case, Service Tax of Rs.63,52,668/- was demanded for difference in the value of ST-3 and ITR for the year 2014-15, 2015-16 and 2016-17 and the demand for the year 2014-15 and 2016-17 is not sustainable as the ST-3 value is more than the value declared in their ITR. The assessee is liable to pay the Service Tax for the difference in the value of ST-3 and ITR for the year 2015-16 only. Therefore demand raised for the year 2014-15 and 2016-17 is required to be dropped.

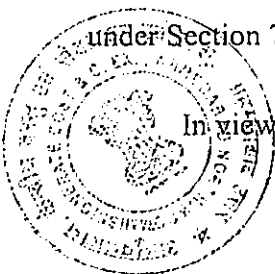


14. I find that earlier, a number of letters were sent to the assessee by the Division/Range for clarification. But, no clarification was submitted by the assessee. They had not provided any details/data for such difference. As the reasons for such difference could not be ascertained, the exact Service Tax liability could not be adjudged. Therefore, for calculation of demand of the Service Tax under this notice, the maximum amount of difference between (i) Value of Services declared in ITR filed by the notice & Value of Services provided as per Service Tax Returns or (ii) Value of 'Total Amount paid/Credited Under 194C, 194H, 194I, 194J' & Value of Services provided as per Service Tax Returns i.e. the highest difference between these two is considered and the highest applicable rate is applied for Non-Payment/Short-Payment of Service Tax (Including Cess) for Financial Year 2014-15, 2015-16 and 2016-17. Therefore, I find that in the Show Cause Notice, the highest differential value was taken for calculation of Service Tax without going into the actual Service Tax payable due to the lack co-operation on the part of the assessee. I also find that in the excel sheet forwarded by the Division office along with the DSCN, the amount of 'Value difference in ITR and STR' was shown as 'Rs.8,53,095/-'. However, the actual Service Tax recoverable in the present case for the year 2015-16 is as per the actual differential amount of ST-3 and ITR.

15. As discussed in above paras, the differential amount of ST-3 value and ITR for the year 2015-16 comes to Rs. 32,41,934/- and after deduction of commission paid to their sub-agents, the differential amount comes to Rs.10,00,217/- on which the Service Tax is required to be recovered from the assessee @ 14.5%. The Service Tax so recoverable comes to Rs.1,45,031/- plus interest and penalty as applicable during the relevant period.

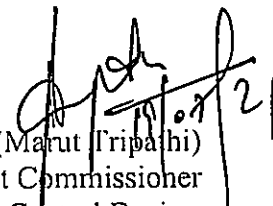
16. I find that the Assessee has never disclosed or intimated to the Department regarding receipt/providing of Service of the differential value. The difference in the value has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16. 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 is seen that the assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 1,45,031/-. 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. Hence, the same is 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.

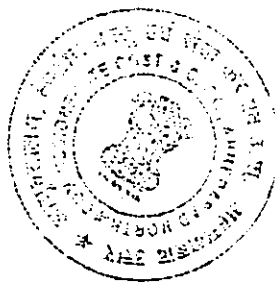
In view of my findings above, I pass the following orders-



ORDER

- (i) I confirm the Service tax of Rs.1,45,031/- (Rupees One Lakh Forty Five Thousand and Thirty One Only) under Section 73(1) of the Finance Act, 1994 for the difference in the value of ST-3 and ITR for the year 2015-16.
- (ii) I drop the Service Tax demand raised for the year 2014-15 and 2016-17.
- (iii) I order that the interest at the appropriate rate be recovered from the assessee under Section 75 of the Finance Act, 1994;
- (iv) I impose a penalty of Rs. 1,45,031/- (Rupees One Lakh Forty Five Thousand and Thirty One Only) on M/s.Bhavi Tours & Travels, Ahmedabad under Section 78 of the Finance Act, 1994.
- (v) I further order that in the event the entire amount confirmed as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr. No. (iii) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.


 (Marut Tripathi)
 Joint Commissioner
 Central GST & Central Excise,
 Ahmedabad-North



F.No. STC/15-92/OA/2020
 BY Regd Post/Speed Post

Dated-19.07.2021

To

M/s Bhavi Tours & Travels,
 Rainbow Complex, 8,
 Near Old High Court Railway Crossing,
 Navrangpura, Ahmedabad-380009

Copy for information to:

1. The Commissioner, Central GST & Central Excise, 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. Guard File. ✓

