



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. STC/15-146/OA/2020

DIN- 20220964WT0000010610

आदेश की तारीख/Date of Order :- 27.09.2022  
जारी करने की तारीख/Date of Issue :- 27.09.2022

द्वारा पारित/Passed by:- लोकेश डामोर /Lokesh Damor  
सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 42/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 रू. 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 -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।

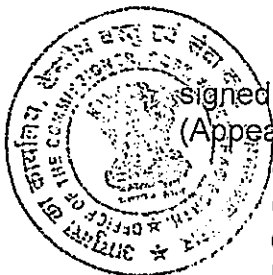
(77) उक्त अपील की प्रति।

(78) 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 .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 (Appeals) Rules, 2001. It should be accompanied with the following:

(77) Copy of accompanied Appeal.

(78) 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. STC/15-146/OA/2020 dated 22.10.2020 issued to M/s Bhagwati Aviations Service Private Limited, 3<sup>rd</sup> Floor, OM Complex, 32, Swastik Society, C G Road, Navrangpura, Ahmedabad, Gujarat-380009.



## BRIEF FACTS OF THE CASE

M/s. Bhagwati Aviations Services P.Ltd, 3<sup>rd</sup> Floor, Om Complex, 32 Swastic Society, C.G Road, Ahmedabad, Gujarat 380 009. (hereinafter referred to as the 'assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AADCB4228RST001 & are engaged in the business of providing taxable services under the category of Service Sector (Hospitality 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. 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.2015-16 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 Gross Value Provided (STR)	Sale Of Services (ITR)	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	4608070	44666519	1281341	40058449	5808475
Total						5808475

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, Letter dated 06.10.2020 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.

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 Income Tax 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. Further, 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 is not possible to quantify short payment of Service Tax, if any, for the period 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

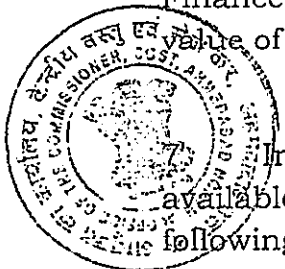


*of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated 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 appears that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the Financial year 2016-17 to 2017-18 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 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) under this Show Cause Notice, and due service tax will be recoverable from the assessee accordingly.

6. The government has from the very beginning placed full trust on the service provider so far as 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 by the service provider, no matter how innocently. From the evidence on record, 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 the trust deposited in them. Such outright act in defiance of law, appears 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.

In light of the facts discussed here-in-above and the material evidences available on records, it was revealed that the assessee 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 to 2017-18 (upto June-2017).
- (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 has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16. 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. From the evidences, it was noticed 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. 58,08,475/- (including Cess). It was noticed 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 is to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 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. Therefore Show Cause Notice has been issued to the assessee called upon to show cause as to why :

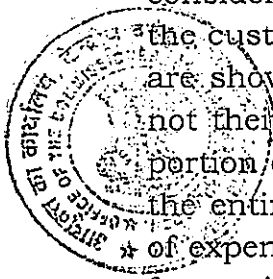
- (i) The Service Tax to the extent of Rs.58,08,475/- (including cess) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 30.09.2020 issued vide F.No.450/61/2020-Cus. IV(Part-1);
- (ii) 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 vide letter dated 16.02.2021 filed their reply to SCN, wherein they stated that they are engaged in the business of domestic/ International tours and travel services for air ticket and hotels. Their business include Air Ticket Booking, Hotel Bookings, Tour packages bookings and related services. They act as travel agents to do bookings based on the request of their customers with different airlines and hotels on behalf of them. In case of air ticket bookings they purchase tickets from the airlines as and when they receive request for booking of the customer and the payments for it are done by them and the same is issued to the customers after charging processing charges or air ticket charges. The same process is followed with hotel bookings and tour packages. They do the business on behalf of the customers and made payment to the hotels and the charges are reimbursed from their customers towards it. Based on the guidance note of the Institute of Chartered Accountants of India the term turnover is defined as follows.

*“turnover means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or account of services rendered, or both, by the company during the financial year”.*

11. Based on this the turnover includes the gross amount received by them including the air ticket and booking charges. Based on the above the total turnover includes the total sale price received by the party. Taking into to consideration of the above definition of turnover the total amount received from the customer i.e reimbursement of expense plus the air ticket/booking charges are show in profit and loss account for the purpose of turnover only but it is not their real income. Whereas in service tax the taxable amount is only the portion of processing charges/air ticket charges charged to customers and not the entire amount since the charges for the ticket are merely re-imbursement of expenses. The processing charges/air ticket service charges are only liable for service tax since the gross amount routed in profit& loss includes the entire amount being reimbursement of expenses and the processing charge /air ticket



service charges. The reimbursement of expenses is not their income and hence the same is not liable to service tax. The assessee has also submitted Monthly reconciliation statement, copy of sale bills, reimbursement of expense ledger, commission income ledger, copy of audit report, service tax payable ledger, service tax receivable ledger, and copy of service tax challans.

12. Based on the reconciliation statement, the income towards Airline ticket charges/process charges are Rs.46,08,070/- on which service tax has been paid by them and offered in return of income. The sale of service provided in ITR for Rs.4,46,66,519/- includes reimbursement of expenses of the ticket and booking charges received from the customers plus the air ticket charges and processing charges of Rs.46,08,070/-. Based on this they stated that they have correctly discharged their liability towards the air ticket charges and booking charges and there is no liability due for the difference since it is towards reimbursement of expenses on which no service tax liability is required to be paid. On the basis of the above contentions they requested to drop the proceedings.

#### PERSONEL HEARING

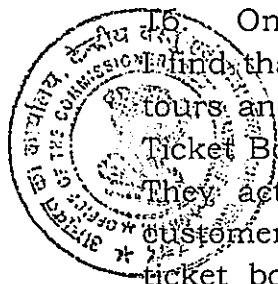
13. Personnel Hearing in this case was granted to the assessee on 30.08.2022 and Shri Dipal Desai, duly authroised representative, appeared on behalf of the assessee. He reiterated their written submissions dated 15.02.2022 and requested to decide the matter on merits.

#### DISCUSSION AND FINDINGS

14. 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.

15. I have carefully gone through SCN, Reply to the show cause notice, Form 26AS, Balance sheet for the year 2015-16, Ledger copy of reimbursement charges, sample copies of invoices issued, reconciliation statement and copies of challans for the relevant period. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs. 58,08,475/- for the financial year 2015-16 on the basis of data based on Form 26AS received from Income Tax authorities. On perusal of the above referred records, I find that the assessee is registered under Service Tax and also filed STR declaring gross value of Rs.46,08,070/- for the relevant period. The Show Cause Notice alleged short/non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77(2) and 78 of the Finance Act, 1994.

On perusal of the reply to SCN and other documents available on record, I find that the assessee is engaged in the business of domestic International tours and travel services for air ticket and hotels. Their business include Air Ticket Booking, Hotel Bookings, Tour packages bookings and related services. They act as travel agents to do bookings based on the request of their customers with different airlines and hotels on behalf of them. In case of air ticket bookings they purchase tickets from the airlines as and when they receive request for booking of the customer and the payments for it are done by



them and the same is issued to the customers after charging processing charges or air ticket charges. The same process is followed with hotel bookings and tour packages. They do the business on behalf of the customers and made payment to the hotels and the charges are reimbursed from their customers towards it. For which they have taken service tax Registration and accordingly filed ST 3 Returns declaring gross income of Rs.46,08,070/- for the relevant period 2015-17.

17. 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. From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service.*

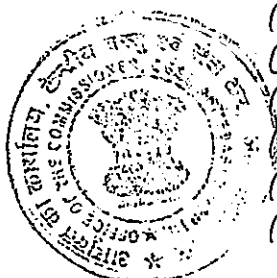
*Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 194 as under:*

*(51) taxable service means any service on which service tax is leviable under Section 66B.*

*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 fourteen percent on the value of all services other than those services specified in negative list, provided r agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"*

18. According to which service tax is levied on all services other than those specified in negative list (Section 66D of Finance act, 194) in the taxable territory by one person to another. In this context the 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*





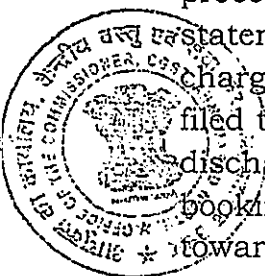
- (o) *Transportation of Passenger with or without accompanied belongings*
- (p) *Transportation of goods.*
- (q) *Mortuary/Funeral services*

19. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided taxable service and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance e Act, 1994. In view of the above, the services provided by the assessee are covered under service tax and are liable to pay service tax also.

20. On perusal of submissions made by the assessee, I find that they are engaged in the business of domestic/ International tours and travel services for air ticket and hotels include Air Ticket Booking, Hotel Bookings, Tour packages bookings and related services. They act as travel agents to do bookings based on the request of their customers with different airlines and hotels on behalf of them. In case of air ticket bookings they purchase tickets from the airlines as and when they receive request for booking of the customer and the payments for it are done by them and the same is issued to the customers after charging processing charges or air ticket charges.

21. On perusal of the above referred records, I find that the assessee claimed that the turnover includes the gross amount received by them including the air ticket and booking charges. The total amount received from the customer i.e reimbursement of expense plus the air ticket/booking charges are show in profit and loss account for the purpose of turnover only but it is not their real income. Whereas in service tax the taxable amount is only the portion of processing charges/air ticket charges charged to customers and not the entire amount since the charges for the ticket are merely re-imburement of expenses. The processing charges/air ticket service charges are only liable for service tax since the gross amount routed in profit& loss includes the entire amount being reimbursement of expenses and the processing charge /air ticket service charges. The reimbursement of expenses is not their income and hence the same is not liable to service tax. The assessee has also submitted Monthly reconciliation statement, copy of sale bills, reimbursement of expense ledger, commission income ledger, copy of audit report, service tax payable ledger, service tax receivable ledger, and copy of service tax challans.

22. On perusal of SCN and other above mentioned documents, I find that the total sale of service provided in ITR/SCN/audited balance sheet is Rs.4,46,66,519/- inclusive of reimbursement of expenses of air ticket charges received from the customers amounting to Rs.4,00,58,417/- plus processing/commission charges of Rs.46,08,070/-. Based on the reconciliation statement, the income towards airline ticket commission charges/process charges is Rs.46,08,070/- on which service tax has been paid by them and filed their ST 3 return accordingly. Further they stated that they have correctly discharged their liability towards the air ticket commission charges and booking charges and there is no liability due for the difference since it is towards reimbursement of expenses of Rs.4,00,58,417/- on which no service tax liability is required to be paid.



23. 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;”**

24. 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. In the instant case, the assessee is engaged in the business of domestic International tours and travel services for air ticket and hotels include Air Ticket Booking, Hotel Bookings, Tour packages bookings and related services. They act as travel agents to do bookings based on the request of their customers with different airlines and hotels on behalf of them. In case of air ticket bookings they purchase tickets from the airlines as and when they receive request for booking of the customer and the payments for it are done by them and the same is issued to the customers after charging processing charges or air ticket charges.

25. 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 of sale of services (ITR) shown in SCN and gross sales as per the audited balance sheet is Rs.4,46,66,519/-. On perusal of the balance sheet, ledger accounts and other details, I find that the income of Rs. 4,00,58,417/- is the reimbursement amount to various airlines towards air ticket charges. I find that the said reimbursable amount of Rs. 4,00,58,417/- 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. Further an amount of Rs.46,08,070/- is declared by the assessee as their taxable value in the STR for the year 2015-16. For the sake of clarity, I reconcile the figures as under:

Description	2015-16
Gross sale of services as per SCN & Balance sheet	44666519
Income declared in their ST3	4608070
Difference	40058449
Less: Amount reimbursed as discussed	40058417
Difference	32

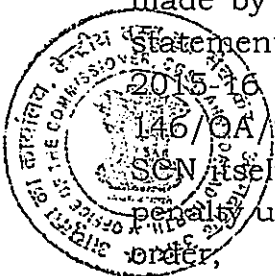


26. On perusal of the above reconciliation and records, I find that the assessee is entitled for the benefit of deduction of reimbursed air fare and accordingly they are not liable to pay any service tax on the said amount. I also find that assessee has paid service tax on taxable amount of Rs.46,08,070/- and filed the ST3 Returns accordingly. 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.

27. Further, as mentioned in the 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 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 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 2017-18(upto June 2017).

28. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by 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 mandate 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 fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon 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. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has 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.

29. 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. 58,08,475/- for the FY 2015-16 is not sustainable and accordingly Show Cause Notice No.STC/15-146/OA/2020 dated 22.10.2020 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,



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

**ORDER**

31. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 58,08,475/- each along with interest and penalties against M/s. Bhagwati Aviations Services P.Ltd vide SCNs No.STC/15-146/OA/2020 Dated 22.10.2020.



*(Signature)*  
27/09/2022  
(Lokesh Damar)  
Joint Commissioner  
Central GST & Central Excise  
Ahmedabad North

F.No. STC/15-146/OA/2020

Date:

To,  
M/s. Bhagwati Aviations Services P.Ltd,  
3<sup>rd</sup> Floor, Om Complex,  
32 Swastic Society, C.G Road,  
Ahmedabad, Gujarat 380 009

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.