



<p>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 & 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>

निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-145/OA/2020

DIN- 20221064WT00003303EE

आदेश की तारीख/Date of Order :- 18.10.2022

जारी करने की तारीख/Date of Issue :- 18.10.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त /Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 48-49/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।

- (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. 5) 00. पांच रूपये (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:

- (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. STC/15-145/OA/2021 dated 22.10.2020 and F.No. STC/15-122/OA/2021 dated 23.04.2021 issued to M/s Winkey, B-703, Vrundavan Complex, Near Subash Chock, Gurukul, Memnagar, Ahmedabad, Gujarat-380052.



BRIEF FACTS OF THE CASE

M/s. Winkey, B-703, Vrundavan Complex, Nr. Subhash Chowk, Gurukul, Memnagar, Ahmedabad 380052 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.- AABFW7529DSD001 & are engaged in the business of Providing Taxable Services under the category of "Advertisement agencies".

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 & 2016-17. On scrutiny of the above data, it is noticed that the Assessee has declared less taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 & 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

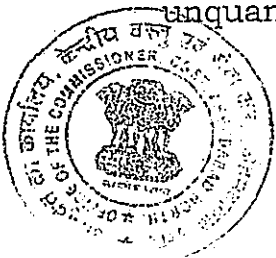
in Rs.)

Sr No	F. Y.	Total 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)	Rate of Duty (including Cess)	Resultant Service Tax short paid	
1	2015-16	21192058	69008509	70231399	49039341	14.5%	7110704	
2	2016-17	16274547	51171133	52202209	35927662	15%	5389149	
Total								12499853

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, letters dated 06.10.2020 and summons dated 14.10.2020 were issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department.

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

5. 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.

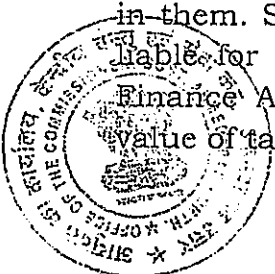


1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies that:

"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."

6. From the data received from CBDT, it was noticed that the "Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)" for the assessment year 2016-17 to 2017-18 has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 to 2017-18 (upto-June 2017) covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

7. The government has from the very beginning placed full trust on the service provider so far 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.



8. In light of the facts discussed here-in-above and the material evidences available on records, it is revealed that the noticee, 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.

9. The above said service tax liabilities of the assessee, M/S. WINKEY., has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16 & 2016-17. Thus, the present notice relates exclusively to the information received from the Income Tax Department.

10. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-2016 to 2016-17. From the evidences, it appears that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 1,24,99,853/- (including Cess). It appears that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them

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.

11. Therefore Show Cause Notice dated 22.10.2020 was issued to M/s.Winkey called upon to show cause as to why :

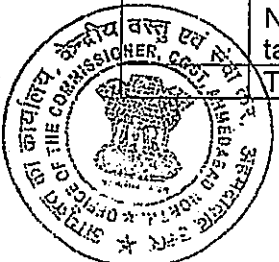
- (i) The Service Tax to the extent of Rs.1,24,99,853/- short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;
- (ii) Service Tax liability 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.

12. Meanwhile another Show Cause Notice bearing No.STC/122/OA/2021 was also issued to the assessee on 23.04.2021 for the year 2015-16. As the period 2015-16 was already covered in the instant SCN dated 22.10.2020, I proceed with the adjudication of both the SCNs together.

DEFENCE REPLY

13. The assessee vide their letter dated 08.06.2021 filed their reply to the SCN for the year 2015-16 wherein they stated that they are providing services of advertisement in print media, hoardings, kiosks etc. They have obtained service tax registration and are regular in payment of service tax and filing returns of service tax. In case when there is delay in the payment of the same they have also paid interest on the same along with service tax. They have also furnished a table showing head wise sales for the FY 2015-16.

Sr.No.	Head on income	Value as per IT	Abatement 85%	Taxable value as per ITR	Value as per STR	ST as per ITR	ST as per STR
1	BLT Sales	3150371	0	0	0	0	0
2	Commission	1161641	0	1161641	1152815	161458	161457
3	Electri Media sales	3895259	0	3895259	3739800	534003	512253
4	Outdoor sales	7420321	0	7420321	7659443	1051899	1086571
5	Print sales	57180962	48603818	8577144	8640000	1203582	1208502
6	Credit Notewithout tax	649673	0	0	0	0	0
	Total	72158881	48603818	21054365	21192058	2950942	2968783



14. They have provided service of selling of space for advertisement for Sr.No.1 of the above table, which is falling under Negative list of services w.e.f.01.07.2012 and VAT was applicable on it, hence they are not liable to charge and pay service tax on this service. They have provided print sales for Sr.No.5 of the above table on which service tax rate is @1.854 (service tax component is 15% of the total sales value). They made total sales of Rs.5,71,80,962/- and got 15% as commission on sale value which comes to Rs.85,77,144/-, which is taxable. As per the above table they have paid excess service tax of RS.17841/-. It is clear from the above table they have paid service timely and correctly and no service tax liability is upon them and requested to drop the proceedings.

15. The assessee has also submitted copy of their reply to the SCN for the year 2016-17 wherein they submitted that they are providing services of advertisement in print media, hoardings, kiosks etc. They have obtained service tax registration and are regular in payment of service tax and filing returns of service tax. In case when there is delay in the payment of the same they have also paid interest on the same along with service tax. They have also furnished a table showing head wise sales for the FY 2016-17.

Sr.No.	Head on income	Value as per IT	Abatement 85%	Taxable value as per ITR	Value as per STR	ST as per ITR	ST as per STR
1	BLT Sales	5275439	0	0	0	0	0
2	Commission	1639291	0	1639291	1639291	243051	243051
3	Electri Media sales	377700	0	377700	377700	55255	55255
4	Outdoor sales	8884884	0	8884884	8922384	1313048	1318673
5	Print sales	35005184	29754406	5250778	5281169	763956	786929
6	Credit Notewithout tax	4176	0	0	0	0	0
	Total	51178322	29754406	16152653	16220544	2395310	2403908

16. They have provided service of selling of space for advertisement for Sr.No.1 of the above table, which is falling under Negative list of services w.e.f.01.07.2012 and VAT was applicable on it, hence they are not liable to charge and pay service tax on this service. They have provided print sales service sales for Sr.No.5 of the above table on which service tax rate is @1.854 (service tax component is 15% of the total sales value i.e.12.6% x 15% =1.854%. They made total sales of Rs.3,50,05,184/- and got commission @ 15% which comes to Rs.52,50,778/-, which is taxable. As per the above table they have paid excess service tax of Rs.8597/-. It is clear from the above table they have paid service timely and correctly and no service tax liability is upon them and requested to drop the proceedings.

PERSONEL HEARING

17. Personal hearing in the matter was held on 28.09.2022 and Shri Umesh Champaner, authorised representative attended the personnel hearing on behalf of the assessee and reiterated in their written submissions dated 10.06.2021 & 11.10.2021 and requested to decide the matter on merits.



DISCUSSION AND FINDINGS

18. 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.

19. I have carefully gone through SCNs, Reply to the show cause notices, Form 26AS, audited Balance sheet, Ledger copy, copies of work orders, reconciliation statement, and copies of ST3 returns for the for the year 2015-16 & 2016-17. In the instant case, Show Cause Notices were issued to the assessee demanding Service Tax of Rs.1,24,99,853/- for the financial year 2015-16 & 2016-17 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 STRs for the relevant period. The Show Cause Notices alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77(1) & Section 77(2) and Section 78 of the Finance Act, 1994.

20. As per SCN, the said assessee is registered with department and were providing taxable services of advertisement in print media, hoardings, kiosks etc. On receipt of the data from CBDT, it was noticed that they had declared different values in their Service Tax Returns (ST-3) as compared to the figures mentioned in their Income tax return (ITR/Form 22AS) for the financial years 2015-16 & 2016-17. The Service tax payable of Rs.1,24,99,853/- is arrived at on the basis of value of "sales of services" shown in the ITR/26AS for the Financial year 2015-16 & 2016-17 by the assessee. By considering the said amount as taxable income, the service tax liability is calculated. The same is tabulated in Table supra. In this connection, I have gone through the taxability of the services provided by the assessee.

21. The taxability of service tax on sale of space and time for advertisement is governed by Section 65(105)(zzzm) of the Finance Act which reproduced as below :

A. Date of introduction:

01.05.2006 vide Notification No. 15/2006 - ST dt.24.04.2006

B. Definition and scope of service:

"Advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.

(Section 65(2) of Finance Act, 1994 as amended)

"Sale of space or time for advertisement" for the purpose of section 65(105) (zzzm), includes,-

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on bill-boards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organization; and

(iii) aerial advertising

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

"Print media" for the purpose of section 65 (105) (zzzm), means,-

"newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Newspapers Act, 1867 (25 of 1867)



(ii) "book" as defined in sub section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867) but does not include business directories, yellow pages, and trade catalogues which are primarily meant for commercial purposes.

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

"Taxable service" means any service provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organization.

Explanation 1.- For the purpose of this sub-clause, "sale of space or time for advertisement" includes, -

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organization; and

(iii) aerial advertising

Explanation 2.- For the purposes of this sub-clause, "print media" means,-

(i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

Also, the Ministry has clarified vide M.F.(D.R.) letter D.O.F No 334/2006-TRU dated 28.02.2006 as below:

This entry levies service tax on sale of time or space for advertisement excluding sale of space for advertising in print media. Sale of advertising time in television and radio by any person other than broad costing agency or organization is also covered under this sub-clause. Some of the other modes of advertisement covered under this mode are internet advertisement, advertisement on buildings, vehicles etc., advertisement in motion pictures, television serials, video and music albums, mobile phones, ATMs, films and television serials (known as product placement). It may be noted that advertisement in print media is excluded.

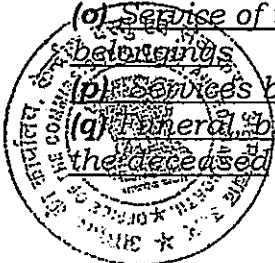
22. It is also pertinent to refer the clarification issued by para 4 of F.No. 341/43/96-TRU dated 31.10.1996, which reproduced as below: "It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisement or gets it done through another person. However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the print media (i.e. newspapers, periodicals etc.) or the electronic media (Doordarshan, private TV channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of service tax. The commission received by the advertising agency would, however, be includible in the value of taxable service". Hence the valuation of the advertisement agency service regarding print media has been clarified according to which the service tax is payable on the commission received by the service receiver and not the entire consideration received from clients.



23. Thus on perusal of assessee's submissions & other documents, I find that the assessee is getting commission from the broadcasting agency @15% of the total consideration. On perusal of the contentions of the assessee and considering Board's letter dt.31.10.1996, I find that the assessee is liable to pay service tax on the said commission @ 15% of the total receipts on account of print media advertisement and the remaining amount is not taxable and accordingly assessee is not liable for payment of service tax on the entire amount received from service receivers. On perusal of profit & Loss account & ledger account submitted by the assessee for the F.Y 2015-16, I find that the assessee have an income of Rs.5,65,31,288/- under the head print media advertisement sale and I consider the value of Rs.86,40,000/-, (approx 15%) declared by the assessee in their STR is commission from print media sales is taxable and the remaining amount of Rs.4,78,91,288/-, (approx. 85%), is not taxable and accordingly assessee is not liable to pay any service tax on the same. Therefore I find that the assessee is eligible for deduction of Rs.4,78,91,288/- from their differential value on which service tax is demanded vide the instant SCN. Similarly on perusal of profit & Loss account & ledger account submitted by the assessee for the year 2016-17, I find that the assessee have an income of Rs.3,50,01,009/- under the head print sale and they have declared Rs.52,81,169/- (approx.15%) in their STR as commission from print media sales and paid service tax on the same and the remaining amount of Rs.2,97,19,840/- (approx 85%) is not taxable and accordingly assessee is not liable to pay any service tax on the said amount.

24. Further, the said assessee, in their reply, submitted that service of sale of space in print media is covered in Negative Lists of services as detailed in Section 66D(g) of Finance Act, 2012 and therefore the income of Rs.31,50,371/- for the year 2015-16 and Rs.52,75,439/- for the year 2016-17 earned by the said assessee on account of sale of space in print media is exempted from the taxable service and accordingly not required to pay any service tax. *With effect from 01.07.2012, the system of Negative List has been introduced according to which the service covered under Negative list is not Taxable. The Section 66D introduced in the Finance Act, 1994 states that the negative list would be comprising of the following services, namely:*

- (a) Services by Government or a local authority
- (b) Services by the Reserve Bank of India
- (c) Services by a foreign diplomatic mission located in India
- (d) Services relating to agriculture or agriculture produce
- (e) Trading of goods
- (f) Any process amounting to manufacture or production of goods
- (g) Selling of space or time slots for advertisements
- (h) Service by way of access to a road or a bridge on payment of toll charges
- (i) Betting, gambling or lottery
- (j) Admission to entertainment events or access to amusement facilities
- (k) Transmission or distribution of electricity by an electricity transmission or distribution utility
- (l) Services by way of education
- (m) Services by way of renting of residential dwelling
- (n) Services by way of extending deposits, loans etc.
- (o) Service of transportation of passengers, with or without accompanied
- (p) Services by way of transportation of goods
- (q) Funeral, burial, crematorium or mortuary services including transportation of the deceased



25. On perusal of the above Section 66D (g), I find that the services provide through Selling of space or time slots for advertisements are exempted from payment of service tax. On perusal of audited balance sheet, ledger accounts and other related documents, I find that the assessee had claimed that they have an income of Rs.31,50,371/- for the year 2015-16 and Rs.52,75,439/- for the year 2016-17 from the category of Selling of space or time slots for advertisements which is rightly falls under the Negative list under 66D(g). On perusal of the ledger accounts and other records available, I find that the assessee has claimed that the said income is received from sale of space or time slot for advertisements and has claimed exemption from payment of service on these income claiming that these are covered under the negative list as they are income derived from category of Selling of space or time slots for advertisements which is rightly falls under the Negative list under 66D(g). However on perusal of the details and ledgers submitted by the assessee, I find that the assessee did not provide any documentary evidence such as copy of invoice or ledger of the service receiver or any other documents to prove that the said income of Rs.31,50,371/- for the year 2015-16 and Rs.52,75,439/- for the year 2016-17 had derived from the sale of space or time slot for advertisements. In the absence of any documentary or other evidence, I am not in a position to verify whether the said income is derived from sale of space or time slot for advertisements and accordingly covered under Negative List. Therefore, I reject the claim of the a assessee that the income of Rs.31,50,371/- for the year 2015-16 and Rs.52,75,439/- for the year 2016-17 claimed as derived from sale of space or time slot for advertisements and falls under negative list and accordingly find that the said income is not allowed to be exempted from the purview of service tax and therefore service tax is required to be paid.

26. Further, on perusal of SCN, reply to SCN and the audited balance sheet for the FY 2015-16, I find that the total value stated in 26AS and as per the SCN is Rs.7,02,31,399/- whereas on perusal of the audited balance sheet, I find that the total sales under the head sales accounts is Rs.7,21,58,879/-. The income declared in the audited profit & loss account is more than the income reflected under Form No. 26AS, thereby, I take the income declared by the assessee in P&L account i.e. Rs.7,21,58,879/- as true and correct. As far as 2016-17 is concerned, I find that the gross value as per 26 AS and SCN is Rs.5,22,02,209/- and revenue from operations is Rs.5,11,71,133/- as per P & L account which is less than the gross value as per 26 AS and SCN, Hence I take the income of Rs.5,22,02,209/- reflected in their Form 26AS and SCN as income for the year 2016-17 it being on the higher side. For the sake of clarity the taxability of the said assessee is tabulated as under:

YEAR	2015-16	2016-17
Gross income as per SCN/BS/26AS as discussed	72158879	52202209
Less: Income declared in ST 3	21192058	16274547
Difference	50966821	35927662
Less: Print media sales (85% value) as discussed	47891288	29719840
Difference	3075533	6207822
Service Tax Rate	14.5%	15%
Service Tax Payable	445952	931173
Total Service Tax payable	1377125	



In view of above discussion and findings, I find that the assessee is liable to pay service tax of Rs.13,77,125/- on the differential taxable value of Rs.92,83,355/- (Rs.30,75,533/- for the year 2015-16 and Rs.62,07,822/- for the year 2016-17) as discussed above. Accordingly, on perusal of above reconciliation and findings, I find that demand of Rs.1,11,22,728/- (Rs.1,24,99,853/- - Rs.13,77,125/-) is required to be dropped from the total service tax of Rs.1,24,99,853/- demanded vide instant SCN.

27. The assessee neither in their replies to SCN nor during the course of personnel hearing explained the reasons for any deduction of these income from their total income with documentary evidence. A taxable person is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documents proving that they are eligible for exemption from payment of service tax on abatement of value for the purpose of calculating service tax liability. In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may have lead to proof that the service provider is liable to pay service tax.

28. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

29. 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 income under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

30. It is provided under section 68 of the Finance Act, 1994 that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B *ibid* in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out above in Table-A.

31. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services provided by him, as discussed above, as they failed to file ST-3 Returns and thereby violated the provisions of Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994. From the foregoing paras and discussion made herein above, I find that the assessee has contravened the provisions of -

- (i) *Section 67 of the Finance Act, 1994 in as much as they have failed to assess and determine the correct value of taxable services provided by them, as explained in foregoing paras for the SCN period;*
- (ii) *Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as-much-as they failed to make payment of service tax during the SCN period, to the credit of the Government account within the stipulated time limit;*
- (iii) *Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self-assess the Service Tax on the taxable value and to file correct ST-3 returns during the SCN period.*
- (iv) *Section 77 of the Finance Act, 1994 as much as they did not provide required data / documents, as called for from them.*

32. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. From the information/data received from CBDT, it appeared that the assessee has not discharged service tax liability in spite of declaring before Income Tax Department. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposited on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax not paid by the assessee worked out in Tables supra for financial Year F.Y. 2015-16 & 2016-17 is required to be recovered from them under Section 73 of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

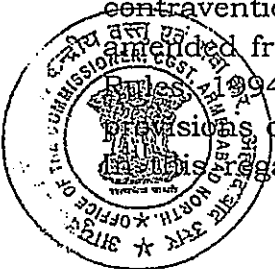


33. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, I find that the assessee is liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

34. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as they failed to pay the correct duty with the intent to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act, 1994.

35. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. The said assessee deliberately not supplied their documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN that they were provided various services.

36. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of the assessee has 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 the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Act, 1994 on part of assessee have rendered them for penal action under the provisions of Section 78 of the Finance Act, 1994, as amended from time to time. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme



Court in the case of UIO Vs Dharmendra Textile Processors -2008 (231)ELT (SC) and further clarification in the case of M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C) wherein, it was, inter alia held that:

"23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides". With the above observation, the Hon'ble Apex court held that mens rea is not an essential ingredient to impose penalty under Section 11AC of the Central Excise Act, 1944 and there is no discretion available on quantum of penalty imposable under that section. As penal provisions of Section 78 of the Finance Act, 1944 and Section 11 AC of Central Excise Act, 1944 are pari materia, the ratio of decision of the Apex court is applicable to Service Tax matters also.

37. On perusal of relevant paras of the SCN, I find that the levy of service tax for FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the 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 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 and the service tax liability was to be recoverable from the assessee accordingly. Since the assessee has not provided any details/information/documents for the FY 2017-18 (upto June 2017) and the department has not also adduced any information/evidence and the reason for the non disclosure has also not been made known to the department, I refrain myself from entering into the said period to determine the liability as otherwise of assessee for service tax.

38. In view of the above facts and findings, I pass the following order.

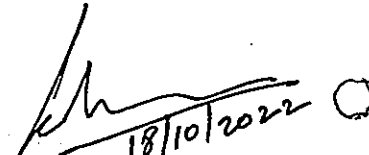
ORDER

1. I confirm the demand of Service Tax of Rs.13,77,125/- (including cess) (Rupees Thirteen Lac Seventy Seven Thousand One Hundred Twenty Five only), which was not paid/short paid during the Financial Years 2015-16 & 2016-17 as per Table supra and order to recover from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994;
2. I drop demand of Rs.1,11,22,728/-(Rupees One Crore Eleven Lac Twenty Two Thousand Seven Hundred Twenty Eight only) as discussed above.
3. I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (1) above under Section 75 of the Finance Act, 1994;
4. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Winkey, under Section 77(1) of the Finance Act, 1994



5. I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s. Winkey under Section 77(2) of the Finance Act, 1994.
6. I impose Penalty of Rs.13,77,125/- (Rupees Thirteen Lac Seventy Seven Thousand One Hundred Twenty Five only) under Section 78 of the Finance Act, 1994, as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Winkey pays the amount of Service Tax as determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Winkey shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

29. Accordingly the Show Cause Notice bearing F.No. STC/15-145/OA/2020 dated 22.10.2020 & F.No. STC/15-122/OA/2021 dated 23.04.2021 is disposed off.


18/10/2022
(LOKESH DAMOR)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-145/OA/2020

Dt.

To
M/s.Winkey,
B-703, Vrundavan Complex,
Nr.Subhash Chowk, Gurukul,
Memnagar, Ahmedabad 380052

Now
To
M/s.Winkey
706, 7 th Floor, Vrajbhoomi,
C.N.Vidyalaya Circle, Beside Girdharpark Society,
Ambavadi, Ahmedabad - 380006.

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The D.C/A.C, Central Excise & CGST, Division-VII, Ahmedabad North.
3. The Supdt, , C. Ex. & CGST, Range-II, Division-VII, Ahmedabad North
4. The Supdt(system) CGST, Ahmedabad North for uploading on website.
5. Guard File

