

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, 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

DIN-20220364WT000091439D

फा.सं./F.No. STC/15-126/OA/2020

आदेश की तारीख/Date of Order :- 10-03-2022

जारी करने की तारीख/Date of Issue :- 10-03-2022

द्वारा पारित/Passed by:-

आर गुलजार बेगम /R. GULZAR BEGUM

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 75/ADC/ GB /2021-22**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है ।

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -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 रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

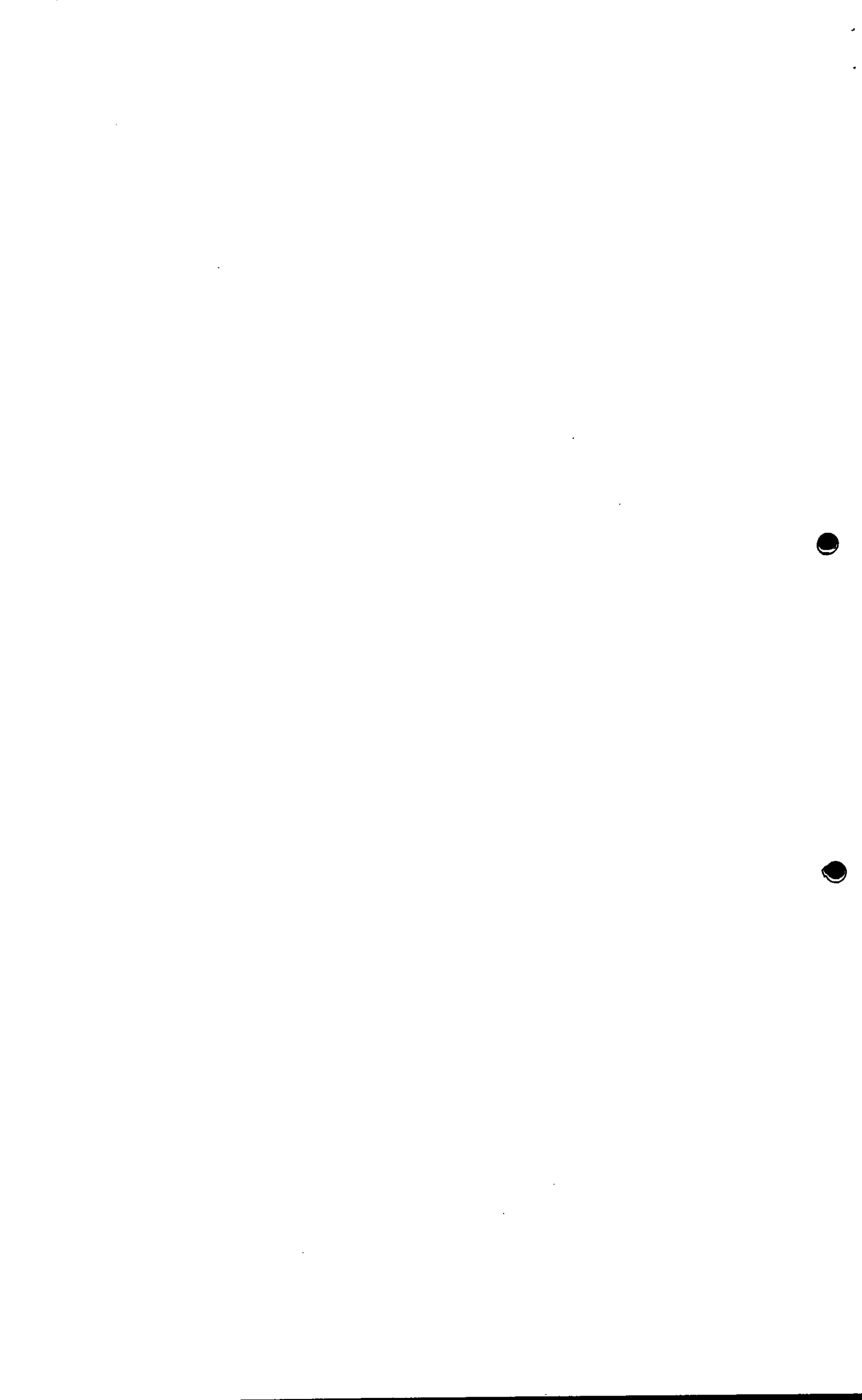
The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(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/15-69/OA/2020 dated 29.09.2020 and Show Cause Notice No. STC/15-126/OA/2020 dated 21.10.2021 issued to M/s Invent Travels Pvt Ltd., 210, Shanti Arcade, 132 ft., Ring Road, Opp. Nirmal flats, Naranpura, Vistar, Ahmedabad-380013.





## BRIEF FACTS OF THE CASE

M/s.Invent Travels Pvt.Ltd, 210, Shanti Arcade, 132.Ft, Ring Road,Opp.Nirmal Flats,Naranpura Vistar, Ahmedabad,Gujarat - 380013(hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-AABCI4779AST001 and are engaged in the business of Providing Taxable Services .

2. On perusal of the data received from CBDT, it was noticed that the assessee had declared different values in Service Tax Return ( ST-3) and Income Tax Return (ITR/Form 22AS) 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 Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	TOTAL VALUE for TDS (including 194C, 194Ia, 194Ib, 194J, 194H)	HIGHER VALUE (VALUE DIFFERENCE in ITR & STR) OR (VALUE DIFFERENCE in TDS & STR)	Resultant Service Tax short paid (including Cess)
1	2015-16	59155927/-	306391/-	0/-	58849536/-	8533183/-

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 07.10.2020 was issued to the said assessee. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. For this reason, no further verification could be done in this regard by the department. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, 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.

4. No data was forwarded by CBDT, for the period 2016-17 and 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

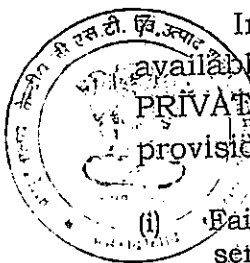
*still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that "merely 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 assessment year 2016-17 to 2017-18 (upto June-2017) has not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letter from the Department. Therefore, the assessable value for the year 2016-17 and 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) not covered under this Show Cause Notice, will be recoverable from the assessee accordingly.

6. The government has from the very beginning placed full trust on the service provider so far 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 is revealed that the noticee, M/s. INVENT TRAVELS PRIVATE LIMITED, have committed the following contraventions of the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004:

(i) Failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such



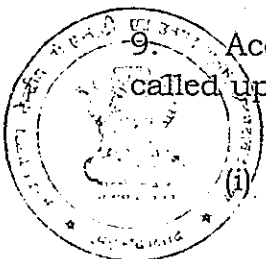
form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994;

- (ii) Failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994 as discussed above;
- (iii) Failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have not paid service tax as worked out in the Table for Financial Year 2015-16 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, M/s. INVENT TRAVELS PRIVATE LIMITED, has been worked out on the basis of limited data/ information received from the Income tax department for the financial years 2015-16. Thus, the present notice relates exclusively to the information received from the Income Tax Department. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2015-16. 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.8533183/-(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 under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

Accordingly Show Cause Notice was issued to M/s. Invent Travels P.Ltd called upon to show cause as to why :

(i) The Service Tax to the extent of Rs. 8533183/- (Rupees Eighty Five lakh Thirty Three Thousand One Hundred Eighty Three Only)



short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 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 2016-17 and 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 filed reply to SCN vide letter dated 23.09.2021 wherein they submitted that they are providing Air Travel Agency providing Air ticket to their clients. As per Rule 7 of Service Tax Rules "The person liable for paying the service tax in relation to the services (of booking of tickets for travel by air) provided by an air travel agent, shall have the option to pay an amount calculated at the rate of (0.7%) of the basic fare in the case of domestic bookings and at the rate of 1.4% of the basic fare in the case of international bookings of passage for travel by air during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax (at the rate specified in Section 66B of chapter V of the Act). As per explanation to Rule 7 "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

11. They further stated that they have fully discharged their service tax liability. In ST3 returns filed they have only the figure on which service tax is paid I.E.0.7% and 1.4% of basic fare instead of showing gross amount and than showing deduction under valuation rules. Hence there is a difference in turnover figure when compared with books wherein total sale proceeds is shown. The detailed reconciliation, ST 3 returns, 26AS, Audited Balance Sheet, Air Ticket Agent Card for ready reference. Hence according to them they have discharged their service tax liability in full and no amount is to be paid and requested to drop the demand as raised u/e.73 along with proposal to recover interest and penalty.

#### PERSONNEL HEARING

12. Personnel Hearing was granted to the assessee on 04.03.2022. Shri Pinkesh Thakkar, CA, duly authorised representative, attended the same he submitted reconciliation statement and stated that they act as "pure Agent" and not liable for service tax.



## DISCUSSION AND FINDINGS

13. I have carefully gone through the records of the case, submission made by the noticee, Audited Balance Sheet, ITR, STR and copies of invoices for the year 2015-16. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.85,33,183/- for the financial year 2015-16 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 85,33,183/ on the differential taxable value of Rs. 5,91,55,927/- for the financial year 2015-16 under proviso to section 73(1) of Finance Act, 1944 or not.

14. In the instant case, in their reply to SCN they submitted that they are providing Air Travel Agency services and providing Air ticket to their clients. As per Rule 7 of Service Tax Rules "The person liable for paying the service tax in relation to the services (of booking of tickets for travel by air) provided by an air travel agent, shall have the option to pay an amount calculated at the rate of (0.7%) of the basic fare in the case of domestic bookings and at the rate of 1.4% of the basic fare in the case of international bookings of passage for travel by air during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax (at the rate specified in Section 66B of chapter V of the Act). As per explanation to Rule 7 "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline. They further stated that they have fully discharged their service tax liability. In ST3 returns filed they have only the figure on which service tax is paid i.e@ of 0.7% and 1.4% of basic fare instead of showing gross amount and than showing deduction under valuation rules. Hence there is a difference in turnover figure when compared with books wherein total sale proceeds is shown.

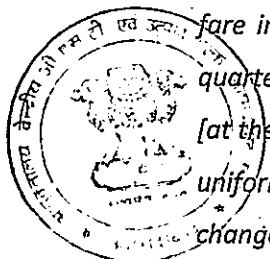
15. I have gone through the written submission filed by the assessee and the On perusal of the records and the reply to SCN, I would I would like to the go through sub Rule 6 of Rule 7 of Service Tax Rules, 1994.

*SERVICE TAX RULES, 1994 (Incorporating changes made till issuance of notification no 6/2017-Service Tax dated 30-1-2017)*

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*6. Payment of service tax*

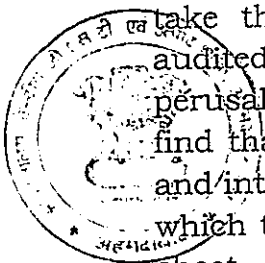
(7) *The person liable for paying the service tax in relation to the services [of booking of tickets for travel by air] provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of [0.7%] of the basic fare in the case of domestic bookings, and at the rate of [1.4%] of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax [at the rate of specified in Section 66B of Chapter V of the Act] and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances. Explanation - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.*



16. On perusal of above referred Rule 6(7) of the Service Tax Rules, 1994, I find that the assessee have an option to pay service tax at the rate of 0.7% of the basic fare in the case of domestic bookings and at the rate of 1.4% of the basic fare in the case international booking of passage for travel by air. On perusal of the audited balance sheet and documents for the year 2015-16, I find that in the instant case the assessee has made domestic booking of Rs.3,88,23,410/- on which service tax is to be paid @ 0.07% on the basic fare according to which the taxable value of the domestic ticket booking is arrived at Rs.1,36,190/- and they have paid the service tax on the same taxable value. Further they have also made international booking valued at Rs.2,23,96,060/- on which service tax is to be paid @1.4% on the basic fare according to which the taxable value of the international booking comes to Rs.1,70,201/- and they have paid service tax on the same also.

17. I find that the records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by assessee during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

18. Further, on perusal of paras 6,7 & 8 of SCN, I find that the levy of Service Tax for the financial year 2016-17 & 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges levelled for the demand for the year 2016-17 & 2017-18 (Up to June 2017), in charging para of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any other income. I therefore refrain from discussing the taxability on any other income. On perusal of audited balance sheet for the year 2015-16, I find that the total revenue from operations is Rs.6,12,19,470/- and the income shown in the ITR/SCN is Rs.5,91,55,927/-. I take the total revenue of Rs.6,12,19,470/- from operations shown in the audited balance sheet as their income as the same is on the higher side. On perusal of the audited balance sheet, ledger account and copies of invoices, I find that the assessee have made total domestic booking of Rs.3,88,23,410/- and international ticket booking of Rs.2,23,96,060/- totalling Rs.6,12,19,470/- which tallies with the revenue from operations shown in their audited balance sheet. Further they have also paid service tax on the taxable value of





Rs.3,06,391/- as determined as per Rule 6(7) of the Service Tax Rules, 1994 as amended.

19. 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.85,33,183/- for the period 2015-16 is not sustainable and accordingly Show Cause Notice F.No.STC/15-126/OA/2020 dated 21.10.2020 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;

ORDER

20. I hereby order to drop proceedings initiated for recovery of service tax of Rs.85,33,183/- along with interest and penalties vide SCN No. F.No. STC/15-126/OA/2020 dated 21.10.2020.

*R. Gulzar Begum*

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

Dated 16/11/20

F.No. STC/15-126/OA/2020

M/s.Invent Travels Pvt.Ltd,  
210, Shanti Arcade,  
132.Ft, Ring Road,Opp.Nirmal Flats,Naranpura Vistar,  
Ahmedabad,Gujarat -

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



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