



केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर  
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,  
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,  
नारायण उपाध्याय मार्ग, भावनगर-364001  
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

दूरभाष : (0278) 2523627 फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाईल सं. V/15-10/Dem-ST/HQ/2011-12  
F. No.

आदेश की तारीख : 23/01/2013.

Date of Order :

जारी करने की तारीख : 23/01/2013.

Date of Issue :

पारितकर्ता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त, केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 02/BVR/Commissioner/2013

1. यह प्रति उस व्यक्ति को, जिसके लिए यह आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

2. इस मूल आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित ढंग से कर सकता है :

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील :

3. वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत अपील निम्न को की जा सकती है।

1। पश्चिम क्षेत्रीय पीठ, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) ऑ 20, न्यू मेन्टल अस्पताल कंपाउन्ड, मेघाणीनगर, अहमदाबाद 380016।

2। अपीलीय न्यायाधिकरण का वित्त अधिनियम, 1994 की धारा 86 की उप धारा (1) के अंतर्गत अपील, सेवाकर नियमावली, 1994 के नियम 9(1) के अंतर्गत निर्धारित एस.टी.5 में आदेश प्राप्त के दिनांक से तीन माह के भीतर की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) जिस अधिनियम, 1994 की धारा 86 के अंतर्गत निर्धारित किए अनुसार शुल्क लगा होना चाहिए। जिस स्थान पर न्यायाधिकरण की न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से निर्धारित फीस रेखांकित बैंक ड्राफ्ट के रुप में भेजी होगी।



- 3। वित्त अधिनियम, 1994 की धारा 86 की उपधाराओं (2) एवं (2ए) के अंतर्गत सेवाकर नियमावली, 1994 के नियम 9(2) के अंतर्गत निर्धारित किए गए फॉर्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क या आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश के प्रति (उनमें से एक प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उपआयुक्त, केन्द्रीय उत्पाद शुल्क को अपीलीय न्यायाधिकरण में आवेदन करने के आदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड / आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।
4. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची1 के अंतर्गत निर्धारित किए अनुसार यथास्थिति मूल आदेश या न्यायनिर्णयनकर्ता प्राधिकारी के आदेश की प्रति पर रुपये 6.50/ का न्यायालय टिकट लगा होना चाहिए।
5. ब्यौरापूर्ण करने हेतु सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 की ओर ध्यान आकर्षित किया जाता है।

To,

(1) M/s. Mahasagar Travels Ltd.,  
Jayshree Talkies Road,  
Kalwa Chowk, Junagadh. (Noticee No. 1 ).

(2) Shri Bhagchand G. Sukhwani  
Managing Director,  
M/s. Mahasagar Travels Ltd.,  
Jayshree Talkies Road,  
Kalwa Chowk, Junagadh. (Noticee No. 2 ).

(3) Shri Amit G. Pande,  
Director,  
M/s. Mahasagar Travels Ltd.,  
Jayshree Talkies Road,  
Kalwa Chowk, Junagadh. (Noticee No. 3 ).

Subject: Show Cause Notice F. No. V/15-10/Dem-ST/HQ/2011-12 dated 19.10.2011.



**BRIEF FACTS OF THE CASE :-**

1 M/s. Mahasagar Travels Ltd., Jayshree Talkies Road, Kalwa Chowk, Junagadh [hereinafter referred to as the Noticee No. 1] were holding Service Tax Registration No. JND/ST/TO/03/00-01 dated 12.07.2000 as a Tour operator, issued by the Deputy Commissioner, Central Excise Division, Junagadh for the purpose of payment of Service Tax under the Head of Tour Operator services as required under the provisions of section 69 of the Finance Act 1994, as amended from time to time. The Noticee No. 1 had been filing half-yearly ST-3 returns with the Service Tax Range, Junagadh till the financial year 2005-06, as prescribed under the said Act and Rules made thereunder. However, since April-2006 onwards, they stopped filing ST-3 returns with Service Tax department and did not pay any Service Tax on the taxable services rendered by them for the period after April-2006. They did not inform the department as to whether they had continued to provide aforesaid taxable services or not after April-2006.

2. An intelligence was developed by the staff of Central Excise, Headquarters' Anti-evasion section, Bhavnagar that the said Noticee No. 1 is indulging in large scale evasion of Service Tax by not paying the appropriate Service Tax on the amount received by them towards taxable value of tour operator services recovered by them for providing tour operator services to their clients. Accordingly, a search was conducted at the premises of Noticee No. 1 on 25.03.2010 under Panchnama under the provisions of Section 82 of the Finance Act, 1994 and further inquiries were conducted under Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters as per Section 83 of the Finance Act, 1994. Documents resumed during the search proceedings at the premises of Noticee No. 1 revealed that they have also been providing Rent-a-Cab and Courier Services to various persons/clients or entities. It was also revealed that the Noticee No. 1 have been providing renting of immovable property services to various clients / persons for commercial use as they have been renting out shops owned by them.

3.1 Inquiries in the case revealed that entire business affairs of Noticee No. 1 is being handled by Shri Bhagchand Gordhandas Sukhvani alias Karubhai, who is the Managing Director of Noticee No. 1. A statement of Shri Bhagchand Gordhandas Sukhvani, Managing Director of Noticee No. 1 was recorded under Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters, on 25.03.2010 wherein he inter-alia stated that he is the Managing Director of Noticee No. 1 and the said company is in existence since 1995; that he is handling the entire affairs of Noticee No. 1. He gave his statement in question-answer form and the questions asked and answers given by him are reproduced below:-

Q. 1: Inform in detail about the type of business carried out by your company.

Ans.: We are mainly dealing in the business of travels/Daily Bus Service and are also running IOC petrol pump in the name of Mahasagar petroleum.



Q. 2: As you replied in answer to Question No.1 that you are operating buses on daily service basis, then please state as to whether this is true that these daily bus services are point to point service? If so, then whether these bus services run on fixed routes on daily basis?

Ans.: Yes, it is true.

Q. 3: Is it true that you are also providing your buses for special conducted tours besides point-to-point bus services? If yes, then give details.

Ans.: Yes, it is true that besides daily basis point-to-point bus services, we have also been providing buses for school tours, tours for marriage functions, yatra tours against monetary considerations.

Q. 4: How many running buses are there in your company and who is the owner of those vehicles?

Ans.: Our company is having nearly 70 small or big buses and all these buses are owned by M/s Mahasagar Travels Limited.

Q. 5: Is it true that for the period since 2006-07 till March-2010, all the buses in your company are owned by M/s Mahasagar Travels Limited?

Ans.: Yes, it is true.

Q. 6: What types of permits have been issued by the RTO for the buses operating in your company? Please furnish their copies.

Ans.: I am producing herewith photocopies of all the permits issued by the RTO and we are having P.C.O.P. permit i.e. Contract Carriage Permit for the buses in our company.

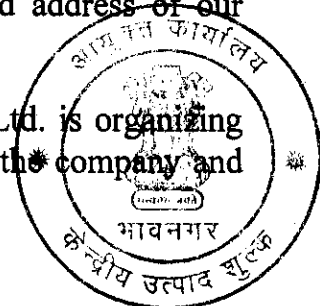
Q. 7: Who issues tickets to the passengers moving in your buses and what types of tickets are being issued to the passengers travelling in your buses?

Ans.: M/s Mahasagar Travels Ltd. is not booking tickets by itself and in all the cities, we have nominated "Booking Agents" who carry out the work of booking of tickets for us and the booking agent mentions the name of the passenger, bus embarking place, date, time and the place of disembarking etc. in the ticket and then issues the ticket to the passenger.

Q. 8: Please furnish details of Booking Agents nominated by your Company and the details of routes of movement of buses.

Ans.: I am furnishing herewith the card containing printed time table of our company and the card containing name and address of our booking agents.

Q. 9: Is it a true fact that M/s Mahasagar Travels Ltd. is organizing routes as well as time table for the buses plying in the company and the rates of tickets are fixed by the company.



Ans.: Yes, it is true.

Q. 10: Please inform as to how much commission is being paid by you to your Booking Agents and inform as to whether you have entered into any agreement with your Booking Agents.

Ans.: Rates of Commission have been fixed at the rates of 10%, 12% and 15% and in some cases, we have entered into agreements with Booking Agents and I am producing herewith the copies of agreements in cases in which we have agreements with Booking Agents.

Q. 11: You have informed previously that M/s Mahasagar Travels Ltd. is not doing any ticket booking by itself then as to how the booking agents, nominated by you, give account to you and what type of written account is being furnished by your booking agents and as to how the company keeps the day to day account of amounts received from Booking Agents.

Ans.: Our Booking Agents deposit amounts of daily collections in our company's bank account by cash or cheque after deducting their commission and adding TDS and some small agents while making passengers board our buses prepare memos of cash collection and send cash to us after deducting commission and adding TDS. Our Company takes all these collections in computer under the Head of Income as "Travelling Income".

Q. 12: Whether it is true that certain tickets seized today under Panchnama dated 25.03.2010 drawn at your office premises are like all other tickets issued by your Booking Agents?

Ans.: All our agents get tickets printed on their own cost and as per their own method and the details printed on the tickets are almost the same. In some cases, computerized tickets are issued and in some cases, tickets are issued manually.

Q. 13: On going through the contract carriage permits of the buses of your company, it appears that besides contract carriage permit some of the buses of your company at later stage also held all India tourist permit. Please explain as to what you have to say in the matter.

Ans.: Yes, it is true that before the year 2008, we had five to six buses of all India tourist permit but the same were not sent outside of Gujarat and therefore we got those permits cancelled and obtained P.C.O.P. (Contract Carriage Permit) for the said buses.

Q. 14: What are the specifications which need to be changed or modified in a bus having contract carriage permit if its permit is required to be converted in all India tourist permit issued in form PTV (See Rule 70(7) VIII)?

Ans.: As per rules of RTO, to obtain all India Permit, general changes in its colour and sitting arrangement are required to be done and contract carriage permit can be issued by Junagadh, RTO and All



India Permit can be issued by DTO, Ahmedabad and All India Permit is issued to only those vehicles which are not older than ten years.

Q.15: Whether buses running in your company are in keeping with the provisions of Rule 128 of Central Motor vehicle Rules?

Ans.: Rule 128 is not applicable to our buses because we don't have all India permit or TV permit.

Q. 16: Is it true that Contract carriage permit comes under the provisions of Rule 84 (Motor Vehicle Act) and Rule 76 of (Gujarat Motor vehicle Act, 1989) and All India Tourist Permit also comes under Rule 84 of Motor Vehicle Act, 1989 and Rule 76 of Gujarat Motor vehicle Act, 1989.

Ans.: I can't answer the question as I don't have Rule 84 and Rule 76 of the Motor Vehicle Act at present and I cannot answer the question as to whether the aforesaid rules provide for the conditions of permit.

Q. 17: Is it true that besides transportation of Passengers, your company is also engaged in transportation of big and small luggage, documents and papers?

Ans.: Yes, it is true. We recover charges of luggage which is over and above 20 Kgs besides the charges from the passengers. We also give separate receipts of such luggage charges. Responsibility of loading, unloading and damages caused if any to the parcel is exclusively on the passenger himself.

Q. 18: Your answer to question No.17 is not matched with the receipts of luggage which have been withdrawn under panchnama dated 25.03.2010 drawn at your office premises during the search proceeding. Please explain in this regard.

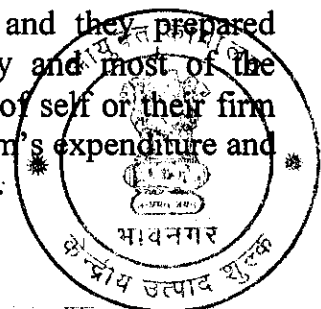
Ans. Answer as above is correct and it is true that luggage receipt is written on the receipt.

Q.19. From the answer given by you of Q.18, it is evident that you agree with the description written on the aforesaid seized receipts. Is it true?

Ans.: Yes, I agree with it.

Q. 20. Name mentioned against the sender's name and address (owner of goods) and name mentioned against the recipient's name and address on the seized receipts are different and in most of the cases one of the name or both the name seems to be the name of firm or company then how to believe that your answer for the question no.17 and 18 are true?

Ans.: Booking office is operated by our men and they prepared receipts as per the direction given by the party and most of the businessmen want to prepare receipt in the name of self or their firm so that they could account for the same in their firm's expenditure and for this reason they took receipts in different name.



Q. 21. Whether your men making such mistake on each receipts and if it is true as per your words then there must be tickets in the name of passenger as per name, address and date mentioned in the receipts?

Ans.: We don't have such tickets or we have not taken it from passengers.

Q. 22. Why shouldn't believe that your answer for the Question no. 17 and 18 is not correct because during the search of your office, details regarding goods received from outside are also seized.

Ans.: It is true that the details of receipt have been found.

Q. 23. Please furnish Balance Sheet, Audit Report and Profit & Loss Account of your Company for the Financial Years 2005-06, 2006-07, 2007-08, 2008-09 and Trial Balance Sheet for the F.Y. 2009-10 of your company.

Ans.: I am producing herewith Audit Report for the Financial Year 2007-08 and 2008-09 and Trial Balance for the year 2009-10. I shall produce Balance Sheet, Audit Report and Profit & Loss Account of the remaining years later.

Q. 24. Please produce the details of income received towards special tours i.e. other than point-to-point service income. Please furnish such details and vouchers relating to such income.

Ans.: I shall produce the same later.

Q. 25. Is it true that the income received from your Booking Agents i.e. amount received against booking of tickets did not include income relating to special tours?

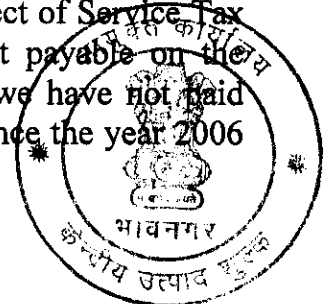
Ans.: Yes.

Q. 26. In the Audit Report of your Company, "Travel Income(others)" is shown below the head of "Operating Income". Please clarify about this and please also clarify about the amount shown as "Rent Income" and produce vouchers relating to the same.

Ans.: I can clarify about these things after consulting my Chartered Accountant.

Q. 27. You have been in the travels business for quiet long time and have been providing point-to-point tour service and you have been providing such services in the vehicles holding contract carriage permit, then why you have not been paying Service Tax on the same after the year 2005-06.

Ans.: Our association has won several cases in respect of Service Tax in which it has been held that Service Tax is not payable on the vehicles having PCOP permit and for this reason we have not paid Service Tax and we have not received any notice since the year 2006 in the matter.



Q. 28. From the documents seized from your premises and from the Audit Report of your company, it is evident that you have been providing Courier Services also and you have not paid any Service Tax on the same.

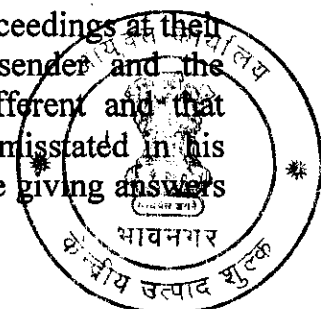
Ans.: Regarding parcel service, we had received a notice in the year 2001 or 2002 in Mahasagar Transport and Courier and had tried to take Service Tax number and had replied to the notice, but till date we have not received any reply and our parcel service is not door-to-door.

Q. 29. Is it true that M/s Mahasagar Transport and Courier Private Limited which had received notice from Service Tax Department and M/s Mahasagar Travels Limited are different and independent companies or otherwise.

Ans.: Yes.

3.2 Depositions made by Shri Bhagchand Gordhandas Sukhvani alias Karubhai, Managing Director of Noticee No. 1 in his statement dated 25.03.2010 when juxtaposed with the relevant statutory provisions of Finance Act, 1994, as amended relating to Service Tax and scrutiny of seized documents as per Panchnama dated 25.03.2011 drawn at the premises of Noticee No. 1 clearly reveal the following facts:-

- Noticee No. 1 have been operating point-to-point services i.e., carrying out transportation of passengers from one city to another in their buses;
- Noticee No. 1 have been rendering tour operator services by using the buses owned by them and such buses are having Contract Carriage Permit (P.C.O.P.) and some of the buses were also having all India tourist permit;
- Noticee No. 1 have been giving their buses on charter or hire basis for special tours or conducted tours for the purposes of marriage functions, educational tours, site seeing tours for tourist destinations, tour to the places of religious importance etc. for different destinations to different service recipients;
- Noticee No. 1 have been engaged in rendering Courier Services by way of delivering time sensitive documents or things from one place to another by using their buses. They have been engaged in the transportation of big and small luggage, articles, documents and papers;
- Though Noticee No. 1 have clearly been rendering courier services, Shri Bhagchand tried to mislead the department by stating in his statement that transportation of luggage/documents have been carried out by them for the passengers travelling in their buses only for excess luggage carried by them and charges were recovered for excess luggage only. However, perusal of a large number of luggage/document receipts titled as 'Mal Saman ni Rasid' resumed from the premises of Noticee No. 1 during search proceedings at their premises on 25.03.2010 clearly reveals that the sender and the receiver in the aforesaid luggage receipts were different and that makes it quite clear that Shri Bhagchand willfully misstated in his statement and tried to mislead the investigations while giving answers

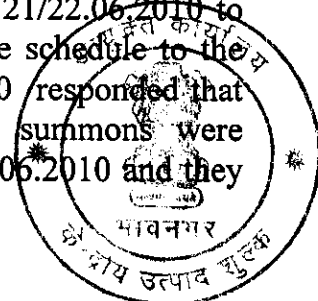




to question Nos. 17, 18 and 20 in his statement dated 25.03.2010. Shri Bhagchand took the plea in his statement that the services of transportation of paper, documents and luggage in their buses could not be brought under Courier services since his services were not door-to-door. The false pleas advanced by Shri Bhagchand were made only to evade statutorily leviable and recoverable Service Tax on the Courier Services rendered by M/s Mahasagar;

- Though Noticee No. 1 have been continuously rendering the tour operator services as well as other services, yet they did not pay Service Tax deliberately with pre-meditated intention to evade the same. Shri Bhagchand while giving answer to question No. 27 in his statement dated 25.03.2010 took the alibi that they are not paying any Service Tax because their association has won several cases of Service Tax relating to tour operator services, though he failed to produce any citations in this regard. This makes it clear that Shri Bhagchand deliberately and intentionally made willful mis-statements to evade payment of service tax on various services rendered by them;
- Though Service Tax exemption has been provided for the tour operator services rendered in relation to the point-to-point services with retrospective effect as per Section 75 of the Finance Act, 2011(8 of 2011), however the services of special tours or conducted tours for the purposes of marriage functions, site seeing tours for tourist destinations, tour to the places of religious importance etc. for different destinations to different service recipients rendered by Noticee No. 1 are taxable under Service Tax under "Tour Operator services" and Noticee No. 1 deliberately did not pay any Service Tax on the same and intentionally did not file any Service tax return with the department after April-2006 for the services rendered by them to suppress facts from the department in order to evade payment of Service Tax;
- Noticee No. 1 have been rendering Rent-a-Cab services to various clients/persons by way of giving motor vehicles like indica, travera, qualis, innova, swift etc. on rent or hire basis for hire or reward to various service recipients. This fact is evident from Seized document Nos. 1 and 2 and other documents as detailed in Annexure to the Panchnama dated 25.03.2010 resumed from their premises. As discussed later in this show cause notice, Noticee No. 1 have not accounted for the income received by them against the Rent-a-Cab services in their Books of Account. This clearly brings out the culpable mental state of Noticee No.1 to evade statutorily leviable and recoverable Service Tax on Rent-a-Cab services rendered by them.

4. Noticee No. 1 were issued summons dated 06.04.2010 calling upon them to appear on 13/14.04.2010 to tender evidence and produce documents as detailed in the schedule to the summons. Noticee No. 1 vide their letter dated 08.04.2010 responded that documents sought in the summons are voluminous and under preparation and that may take more time and they sought 30 days more time in the matter. Noticee No. 1 were issued second summons on 14.06.2010 calling upon them to appear on 21/22.06.2010 to tender evidence and produce documents as detailed in the schedule to the summons. Noticee No. 1 vide their letter dated 19.06.2010 responded that information/details sought as per the schedule to the summons were voluminous and therefore they could not appear on 21/22.06.2010 and they



sought time in the second week of July-2010. As requested by Noticee No. 1, they were issued third summons dated 21.06.2010 calling upon them to appear on 07.07.2010 and producing the documents as per schedule to the summons.

4.1 After much delay and deliberate avoidance of summons, Shri Amit G. Pande, Director & Authorised Signatory of Noticee No. 1 appeared on 07.07.2010 for recording of statement in response to the third summons. Noticee No. 1 were asked to produce the following documents as per schedule to the summons viz.:-

- (i) Vouchers of travelling income (other) and travelling income(N.P.) shown in the Audit Reports for 2006-07 to 2009-10. (upto 07.07.09)
- (ii) Copies of ST-3 returns filed, till date.
- (iii) Vouchers of income earned through special order or buses given on hire for special purposes.
- (iv) Vouchers of Contract Carriage income shown in trial balance for 2009-10. (upto 31.12.09)
- (v) Copies of correspondences made with the Service Tax Department.
- (vi) Copy of Audit Report for 2005-06 and 2006-07.
- (vii) Daily reports received from various Booking agents for the last five years.

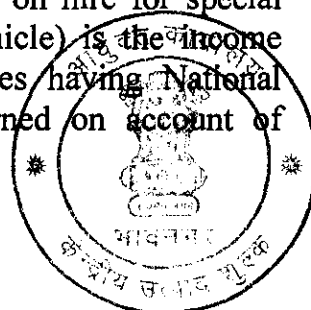
However, against the aforesaid documents demanded, Shri Amit G. Pande produced the following four documents only on 07.07.2010 during the course of recording of his statement viz.:-

- (i) Sample copies of Bus reports/daily reports.
- (ii) Copies of ST-3 Returns for the period 2005-06.
- (iii) Sample copy of Trip Vouchers.(Pages 4)
- (iv) Audit Report for the year 2005-06 and 2006-07.

5.1 Statement of Shri Amit G. Pande, Director & Authorised Signatory of Noticee No. 1 was recorded on 07.07.2010 wherein he deposed in question-answer form. Questions asked and answers given by him are reproduced below:-

Q 1. Please explain about income shown against Travels Income(other), Travels Income (N.P. Vehicle) and rent income as promised by your Managing Director in his statement dated 25.03.2010.

Ans.: The income shown against Travels Income (other) is the income earned during the period on account of vehicles(buses) plied for point to point journeys or given on hire for special trips. Whereas, Travels Income (N.P. vehicle) is the income earned for the same activities from buses having National Permits. Rent income is the income earned on account of renting of shops owned by the company.



Q. 2. Is it true that you are not selling any tangible goods (goods and materials) to your customers while providing service of plying them from one place to another in your buses?

Ans. Yes, we do not sell any goods or materials.

Q. 3. Is it true that there has been no change in the activity i.e. in providing of services carried out by you during the period prior to 2005-06 and that during the period subsequent to 2005-06?

Ans. Yes.

Q. 4. Please produce the details as promised by your Managing Director in his statement dated 25.03.2010 pertaining to income earned from the buses given on hire for special trips.

Ans. We already submitted the sample copies of the vouchers and we shall produce the details of year wise income earned on buses given on hire for special purpose within a week. However, it is not possible to provide all the vouchers of special trips as it is too voluminous.

Q. 5. In the trial balance submitted by your Managing Director under statement dated 25.03.2010, income of Rs. 45,27,816/- has been shown against "Contract Carriage Income". Please give details of this income.

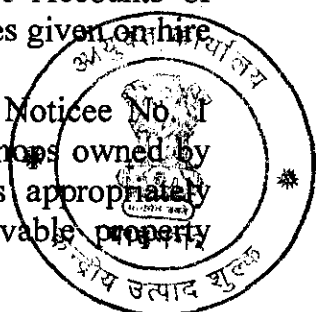
Ans. This is the income earned during the period from the buses given on hire for special trips.

Q. 6. Who issues the permit for Inter-State journeys or National Permit?

Ans. I will check up and let you know this.

5.2 From the statement dated 07.07.2010 made by Shri Amit G. Pande, Director & Authorised Signatory of Noticee No. 1, the following facts emerge:-

- The income shown by Noticee No. 1 in their books of accounts against Travels Income (other) is the income earned during the period on account of vehicles(buses) plied for point- to-point journeys or buses given on hire for special trips;
- Noticee No. 1 have been engaged in providing the same type of services carried out by them during the period prior to 2005-06 and that during the period subsequent to 2005-06;
- "Contract Carriage Income" shown in the Books of Accounts of Noticee No. 1 showed the income earned from the buses given on hire for special trips;
- "Rent Income" shown in the Books of Accounts of Noticee No. 1 showed the income earned on account of renting of shops owned by the company. Such services of renting of shops is appropriately classifiable under the services of 'renting of immovable property



services' as defined under sub-clause (zzzz) of Section 65(105) of the Finance Act, 1944 as amended;

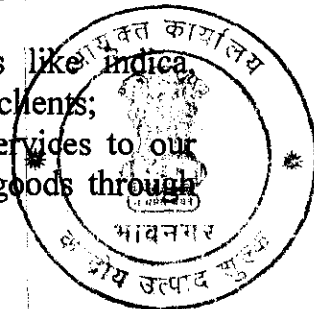
- Noticee No. 1 did not provide all the vouchers of special trips, despite being called for to do so, under the excuse of terming the said documents as too voluminous.

6.1 A further statement of Shri Amit G. Pande, Director & Authorised Signatory of Noticee No. 1 was recorded on 20.04.2011 who appeared after issuance of three summons dated 18.02.2011, 14.03.2011 and 24.03.2011. Vide the third summons dated 24.03.2011, appearance was sought on 12.04.2011 whereas, Shri Pande turned up only on 20.04.2011 for submission of documents and recording of statement. Shri Amit G. Pande produced Authority Letter dated 01.04.2011 issued by Noticee No. 1 authorizing him to appear in the matters of Service Tax on behalf of the company. In his statement dated 20.04.2011, Shri Amit G. Pande inter alia stated that he is the Director of Noticee No. 1 which commenced operations in 1995; that he has been with Noticee No. 1 since last 10 years in the capacity of Director, that his company is engaged in providing tour operator services by using their buses and rent-a-cab services by using four wheeler vehicles like indica, travera, qualis, swift, innova etc. operated by his company. He also stated that his company is engaged in the delivery of parcel services through the buses owned by his company. Shri Amit G. Pande was shown the panchnama dated 25.03.2010 drawn at the premises of Noticee No. 1, statement dated 25.03.2010 of Shri Bhagchand G. Sukhvani, M.D of his company and his own statement dated 07.07.2010 and after perusing the said documents, he signed upon the same in token of the correctness of the facts narrated in the said documents. He gave his further statement in question-answer form. Questions asked and answers given by Shri Amit G. Pande in his statement dated 20.04.2011 are reproduced as under:-

Q. No.1:- Please explain the business activities carried out by your company M/s Mahasagar Travels Limited, Jayshree Talkies Road, Kalwa Chowck, Junagadh.

Answer: - My company M/s Mahasagar Travels Limited is dealing in the following business activities viz.:

- we have been in the business of travels/Daily Bus Service from one city to another and for that purposes, we have been operating point-to-point services to the users of our bus services;
- we have been giving our buses for special tours or conducted tours for the purposes of marriage function, educational tour, site seeing of tourist destinations or visit to religious destinations etc. In such cases entire bus is given on rent/ hire to our clients;
- we have been running IOC petrol pump in the name of Mahasagar petroleum;
- we have been giving travel vehicles like indica, travera, qualis etc. on rent or hire to our clients;
- we have also been providing parcel services to our clients who book their documents or goods through



our bus service which is called parcel service for which we have been issuing "Mal saman ni Rashid".

Q. No. 2: M/s Mahasagar were issued summons dated 06.04.2010 calling upon them to appear on 13/14.04.2010 to tender evidence and produce documents as detailed in the schedule to the summons against which nobody turned up on the appointed date and time. Again on 14.06.2010, another summons was issued for appearance on 21/22.06.2010 to tender evidence and to produce documents as detailed in the schedule to the summons. M/s Mahasagar vide their letter dated 19.06.2010 responded that information/details sought as per the schedule to the summons were voluminous and therefore they could not appear on 21/22.06.2010 and they sought time in the second week of July-2010. As requested by M/s Mahasagar, third summons dated 21.06.2010 was issued calling upon for appearance on 07.07.2010 and producing the documents as per schedule to the summons. Shri Amit G. Pande, Director & Authorised Signatory of M/s Mahasagar appeared on 07.07.2010 in response to the third summons. Though M/s Mahasagar were asked to produce the following documents as per schedule to the summons viz.:-

- (i) Vouchers of travelling income (other) and travelling income(N.P.) shown in the Audit Reports for 2006-07 to 2009-10. (upto 07.07.09)
- (ii) Copies of ST-3 returns filed, till date.
- (iii) Vouchers of income earned through special order or buses given on hire for special purposes.
- (iv) Vouchers of Contract Carriage income shown in trial balance for 2009-10. (upto 31.12.09)
- (v) Copies of correspondences made with the Service Tax Department.
- (vi) Copy of Audit Report for 2005-06 and 2006-07. .
- (vii) Daily reports received from various Booking agents for the last five years.

However against the aforesaid documents demanded, Shri Amit Pande produced the following four documents only on 07.07.2010 viz.:-

- (i) Sample copies of Bus reports/daily reports.
- (ii) Copies of ST-3 Returns for the period 2005-06
- (iii) Sample copy of Trip Vouchers.(Pages 4)
- (iv) Audit Report for the year 2005-06 and 2006-07.

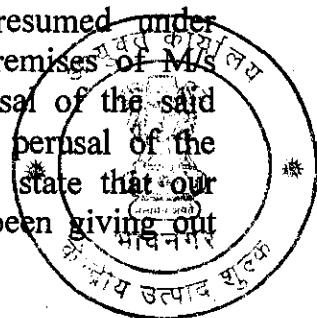


You are being shown the aforesaid summons, letter dated 19.06.2010 of M/s Mahasagar and statement dated 07.07.2010 of Shri Amit G. Pande, Director & Authorised Signatory of M/s Mahasagar. Despite being called upon to produce vouchers of various incomes as mentioned above, your company could not produce the same terming the same as voluminous. During the search at the premises of M/s Mahasagar on 25.03.2010, the aforesaid documents could not be recovered /retrieved in totality since being not found during the course of search. Now, to arrive at the Service Tax liability of your company for the various taxable services rendered, you are requested to provide the period wise summary of incomes earned under various heads by your company as desired under schedule to the summons dated 24.03.2011. Do you have the requisite data and are you ready to do so?

**Answer:** Yes, we are ready to produce the requisite details as demanded in the schedule to the summons dated 24.03.2011. Regarding vouchers of special tours/ conducted tours of buses, I state that the same are too voluminous and therefore, it is not possible to collect or collate the same and produce to you. However, we hereby produce five files containing details pertaining to Audit Report of my company, trip register, service tax payment challans, luggage income details, summary of special trips and summary of special trips conducted for educational purposes in our buses for the period of 2006-07 to 2010-11 (till Feb-2011). The said document are submitted in five files marked as (i) A-1 (2006-07) having page No. 1 to 131, (ii) A-2 (2007-08) having page No. 1 to 135, (iii) A-3 (2008-09) having page No. 1 to 141, (iv) A-4 (2009-10) having page No. 1 to 150 and (V) A-5 (2010-11) upto Feb-2011 having page No. 1 to 153. The said documents are submitted as demanded in the schedule to the summons.

**Q. No. 3:-** Please peruse the seized document Sr. No. 1 and 2 titled as "Lal Colour No Nano Chopro (Rojmel)" resumed under panchnama dated 25.03.2010 drawn at the premises of M/s Mahasagar Travels Limited. Details available in the said register shows that your company M/s Mahasagar Travels Ltd. have been giving out vehicles like Indica, Travera, Qualis, Swift etc. to various clients on rent or hire. Details in the said register and other such registers/documents resumed from the premises of your company under the aforesaid panchnama reveal that your company has been operating as a rent-a-cab service provider also and have been receiving taxable value of such services rendered to various clients. Please comment on the same.

**Answer: -** I have perused the seized document Sr. No. 1 and 2 titled as "Lal Colour No Nano Chopro (Rojmel)" resumed under panchnama dated 25.03.2010 drawn at the premises of M/s Mahasagar Travels Limited. In token of perusal of the said documents, I have signed on the same. After perusal of the details/entries available in the said register, I state that our company, M/s Mahasagar Travels Ltd. have been giving out

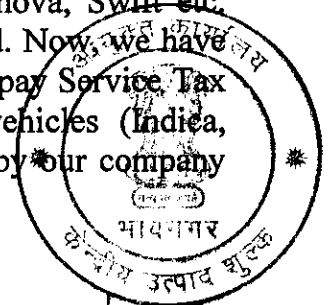


vehicles like Indica, Travera, Qualis, swift etc. to various clients on rent or hire. I have also perused details in the said register and I state and confirm that our company has also been operating as a rent-a-cab service provider and have been receiving amounts towards taxable value of such services rendered to various persons/clients. However, I would like to clarify that the said vehicles are not under the ownership of M/s Mahasagar Travels Limited and these vehicles were taken from the owners of these vehicles on commission basis and the same were deployed for rendering Rent-a-Cab services by our company.

Q. No. 4: Have you paid Service Tax on the tour operator, rent-a-cab and courier services rendered by your company M/s Mahasagar Travels Ltd. in the past years? Please give details of nature of services rendered.

Answer:- No, my company had not paid any Service Tax on the tour operator services after March-2006, since there was dispute regarding the taxability of point-to-point tour operator services and exemption to the same has been provided by the Government with retrospective effect in the current budget itself. So far as the liability to Service Tax on special tours or conducted tours through our buses, I state that we have paid some Service Tax towards the same under the category of Rent-a-Cab services for which photocopy of Service Tax challans are submitted in the aforesaid files submitted by us. We paid these Service Tax amounts in the Rent-a-Cab services because of the fact that definition of Cab was changed with effect from 01.06.2007 whereby "Cab" also includes "any motor vehicle constructed or adapted to carry more than twelve passengers excluding the driver for hire or reward".

Regarding, rent-a-cab services, our firm had given on rent or hire some vehicles like Indica, Travera, Qualis, Innova, Swift etc. whose details are available in seized document Sr. No. 1 and 2 titled as "Lal Colour No Nano Chopro (Rojmel)" resumed under panchnama dated 25.03.2010 drawn at the premises of M/s Mahasagar Travels Limited. So far as Rent-a-Cab services are concerned, we have not taken the amounts or income shown in the aforesaid seized document Sr. No. 1 and 2 titled as "Lal Colour No Nano Chopro (Rojmel)" as mentioned above in our Books of Account since we have provided the services of Rent-a-Cab in such vehicles viz. Indica, Travera, Qualis, Innova, Swift etc. by taking these vehicles on commission basis from their respective owners. I state that no such vehicles viz. Indica, Travera, Qualis, Innova, Swift etc. are/were owned by M/s Mahasagar Travels Ltd. Now, we have been given to understand that we are liable to pay Service Tax on such services rendered by us through vehicles (Indica, Travera, Qualis, Innova, Swift etc.) deployed by our company for rendering Rent-a-Cab services.



Regarding Parcel Services rendered through our buses for which we have been issuing Mal Saman ni Rashid (receipt for the goods), I state that certain items, goods or documents are being booked by our customers or travelers who use our bus services, who book such things by visiting our offices and at the destination, the persons receiving such things visit our office and collect the same. Thus, our parcel services are not door-to-door. Further, we have submitted the details of luggage income, in which entries are made on consolidated basis and single entries in the said luggage income indicate aggregate of amounts received through various receipts. Further, as per our understanding such transportation of goods, articles etc. through our bus services are exempted from Service tax as provided under Notification No. 34/2004-ST dated 03.12.2004 as amended as the value or amount received by our company in respect of individual consignments are quite less than Rs. 750/- and hence exempted under GTA.

Q. No. 5. You are being shown seized document Sr. No. 1 and 2 titled as "Lal Colour No Nano Chopro (Rojmel)" resumed under panchnama dated 25.03.2010 drawn at the premises of M/s Mahasagar Travels Limited. Please peruse the same and furnish the registration certificate of Vehicle Nos. issued by RTO in respect of the vehicle Nos. mentioned in the said documents as (i) Qualis 1856 (ii) Travera 711 (iii) Indica 2476 (iv) Swift 9660 (v) Innova 1828 (vi) Qualis 1828 (vii) Innova 665 etc. which have been used by M/s Mahasagar Travels Ltd. for offering Rent-a- Cab Services.

Ans. : We do not have the registration certificates of the said vehicles with us as of now. However, we shall collect the photocopies of the said Registration Certificates from their respective owners and submit the same to your office at the earliest.

Q. No. 6: Have you been filing Service Tax returns of your company with the department?

Answer:- We had been filing our Service Tax returns with the Department till March-2006. Since April-2006 onwards, we have stopped filing returns with the department. Now, we have decided to file Service Tax returns henceforth. Further, for the past period of 2006-07 to 2010-11, we shall shortly pay the outstanding Service Tax with interest on special tours under tour operator services as well as on Rent-a-Cab services and we shall inform the department accordingly.

Q. No. 7: Did your company ever inform/intimate the department after April-2006 with regard to the fact as to whether they continue to render taxable services or otherwise?

Ans.: No, we have not informed the Department about the rendering of taxable services after April-2006 by our company.

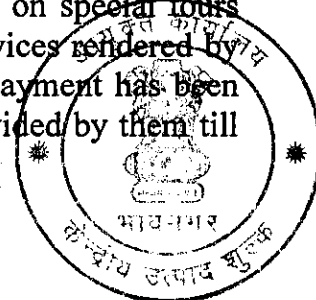




6.2 From the statements dated 20.04.2011 and 07.07.2010 made by Shri Amit G. Pande, Director & Authorised Signatory of Noticee No. 1 and from the documents resumed from/submitted by Noticee No. 1, the following inferences emerge:-

- Noticee No. 1 have been providing travels/daily bus service from one city to another and for that purposes, they have been operating point-to-point services to the users of their bus services. Such services are exempted from payment of Service Tax as per Notification No. 20/2009-S.T., dated 07.07.2009 and the exemption under the said notification has been given retrospective effect from 01.04.2000 vide Section 75 of the Finance Act, 2011 (8 of 2011);
- Noticee No. 1 have been giving their buses for special tours or conducted tours on charter or hire basis for the purposes of marriage function, educational tour, site seeing of tourist destinations or visit to religious destinations etc. and in such cases of tours, entire bus/es was/were given on rent/ hire to their clients. Such services rendered by Noticee No. 1 squarely fall within the category of services as defined under tour operator services and hence Noticee No. 1 are required to pay appropriate Service Tax on the taxable value of such tour operator services realized by them, which they have not done;
- Noticee No. 1 have been giving travel vehicles like indica, travera, qualis etc. on rent or hire to their clients. They have not accounted for the income earned from such services in their books of accounts. Such services provided by Noticee No. 1 appropriately fall under the category of Rent-a-Cab services and therefore Noticee No. 1 are required to pay appropriate Service Tax on the taxable value of such Rent-a-Cab services realized by them;
- Noticee No. 1 have been providing parcel services to their clients who book their documents, articles or goods through their bus services which is called parcel services and against such services Noticee No. 1 have been issuing "Mal saman ni Rashid" in lieu of payments realized against rendering the said services. Such services provided by Noticee No. 1 merit classification under the category of Courier Services and therefore Noticee No. 1 are required to pay appropriate Service Tax on the taxable value of such Courier Services realized by them.
- "Rent Income" received by Noticee No. 1 against renting of shops is income earned on account of rendering services of 'renting of immovable property services' as defined under sub-clause (zzzz) of Section 65(105) of the Finance Act, 1944 and the same is liable for payment of Service Tax with effect from 01.06.2007. M/s Mahasagar have been rendering such services but have never paid Service Tax on the same.

Though, Shri Pande in his statement dated 20.04.2011 promised that they would pay the outstanding Service Tax with interest on special tours under tour operator services as well as on Rent-a-Cab services rendered by them and shall inform the department, however no such payment has been made in the matter and no such information has been provided by them till the issuance of this show cause notice.



**7. STATUTORY PROVISIONS RELATING TO THE SERVICES RENDERED BY M/S MAHASAGAR VIS-À-VIS LIABILITY OF M/s MAHASAGAR TO PAY SERVICE TAX:**

**7.1. Tour Operator's Service:**

7.1.1. Service tax on Tour operator service was introduced from 01.09.1997. The definition of the said Service under section 65 (115) of the Finance Act, 1994 as amended has been as under:

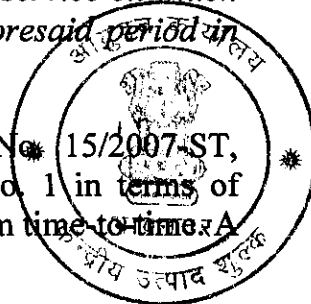
*"Tour Operator" means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder.*

7.1.2.1. Notification No. 15/2007-ST dated 4/4/2007 has been issued from F. No. 354/180/2005-TRU under the provisions of Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. The text of the said Notification is as under:

*Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof) under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act) on services provided by a tour operator providing services in relation to transport of passengers from one place to another (other than services provided in relation to package tour) operating under a contract carriage permit issued by the appropriate transport authority and that such services were liable to service tax under sub-clause (n) of clause 105 of section 65 of the Finance Act, which was not being levied according to the said practice during the period commencing from the 1st day of April 2000 and ending with the 4th day of February 2004;*

*Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act 1944 (1 of 1944) read with section 83 of the Finance Act, the Central government hereby directs that the service tax payable on services provided by a tour operator providing services in relation to transport of passengers from one place to another (other than services provided in relation to package tour) operating under a contract carriage permit issued by the appropriate transport authority, as is in excess of the service tax calculated on a value which is equivalent to forty percent of the gross amount charged by such service provider for providing the said taxable service, shall not be required to be paid in respect of such taxable service on which the service tax was not being levied during the aforesaid period in accordance with the said practice.*

7.1.2.2 In view of the above mentioned Notification No. 15/2007-ST, abatement of 60% of the value is allowed to Noticee No. 1 in terms of Notification No. 2/2004-ST dated 5.2.2004 as amended from time to time.



new Notification No. 1/2006-ST dated 1.3.2006 has been issued, which also grants abatement of 60% for the services provided in relation to tour by a 'tour operator', subject to the conditions mentioned therein.

7.1.3.1 The statutory definitions of some of the relevant terms related to 'tour operator' service, as defined under the provisions of the Finance Act, 1994 are as under:

**Section 65(105)(n)**

*"taxable service" means any service provided or to be provided, to any person, by a tour operator in relation to a tour.*

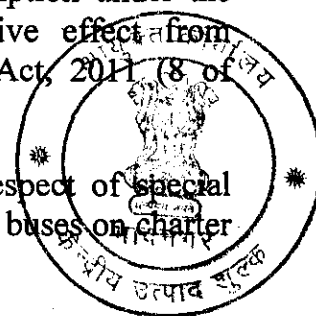
**Section 65(113)**

*"tour" means a journey from one place to another irrespective of the distance between such places.*

7.1.3.2 Noticee No. 1 have been engaged in the business of organizing or arranging tours by using their buses having contract carriage permit/national permit. They have been giving their buses on charter or hire basis to various persons for the purposes of marriage functions, educational tours, site seeing of tourist destinations or visit to religious destinations etc. Out of the aforesaid services rendered for tours, the tours conducted or journey organized or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field are not liable to Service Tax as the same are not classified as 'tour' as defined under tour operator services under Section 65(115) of the Finance Act, 1994 as amended.

**7.1.4. In view of the facts discussed in the foregoing paras and in view of above statutory definitions, it appears that :-**

- (i) the journeys carried out by the buses of Noticee No. 1 from one town or city to another town or city, known as point-to-point transport service and special tours conducted for sight-seeing, marriage functions, visits to religious places etc. is covered under the definition of 'tour', as defined under Section 65(113) of the Finance Act, 1994;
- (ii) Noticee No. 1 are engaged in the business of planning, scheduling, organizing, arranging and also operating such buses having 'contract carriage' permits and therefore they are a 'tour operator', as defined under Section 65(115) of the Finance Act, 1994;
- (iii) "point-to-point" services rendered by Noticee No, 1 are exempted from payment of Service Tax as per Notification No. 20/2009-S.T., dated 07.07.2009 and the exemption under the said notification has been given retrospective effect from 01.04.2000 vide Section 75 of the Finance Act, 2011 (8 of 2011);
- (iv) the services rendered by Noticee No. 1 in respect of special tours or conducted tours by way of giving their buses on charter



or hire basis for the purposes of marriage functions, site seeing of tourist destinations or visit to religious destinations etc. are taxable under the Tour Operator's services and such services rendered by Noticee No. 1 squarely fall within the category of tour operator services and therefore Noticee No. 1 are required to pay appropriate Service Tax on the taxable value which is 40% (after deducting admissible abatement) of the gross amount realized by Noticee No. 1 against such tour operator services rendered by them;

- (v) amount realized by Noticee No. 1 against giving their buses on charter or hire basis to educational bodies does not attract Service Tax.

7.1.5 From the above facts, it appears that the services of special tours for the purposes of marriage functions, site seeing of tourist destinations or visit to religious destinations etc. rendered by Noticee No. 1 is covered under Taxable Services as a tour operator as defined under Section 65(105)(n) of the Finance Act, 1994 and Noticee No. 1 are required to pay Service Tax on the value of taxable services realized by them after deducting admissible abatement. Noticee No. 1 have not paid any Service Tax under tour operator services after April-2006.

7.1.6 During the recording of statement of Shri Amit G. Pande, Director of Noticee No. 1 on 20.04.2011, Shri Pande produced documents relating to amounts recovered by Noticee No. 1 from their clients against the services rendered by way of giving their buses on charter or hire basis for special tours for the purposes of marriage functions, site seeing of tourist destinations or visit to religious destinations etc. Such details are mentioned in the files marked as A-1 (2006-07), A-2 (2007-08), A-3 (2008-09), A-4 (2009-10) and A-5 [2010-11(till Feb.)]. They have produced details of income received against such services rendered by them under the head "Contract Carriage" (during the years 06-07, 07-08 & 08-09) wherein they have provided "Group Summary" showing summary of income received from various persons (service recipients) on year-wise basis. Similarly, they have shown such income received against such services rendered by them under the head "ADV. TRIP" (during the years 09-10 and 10-11) wherein they have provided "Group Summary" showing summary of income received from various persons (service recipients) on year-wise basis. They have also provided details of buses given for educational tours under the income head "School" and "Group Summary" has been provided for the income from schools. Such income against the buses given on rent or hire to schools are exempted as the same are in the nature of educational tours. However, in the said summary, some of the institutions appear to be coaching classes and therefore such income received from coaching classes are liable to Service Tax. The details furnished by Noticee No. 1 in the aforesaid five files (A-1 to A-5) have been taken as the basis to arrive at the actual taxable value of services rendered by Noticee No. 1 under tour operator's services. On the basis of the details available in the aforesaid five files, a chart having details on year-wise basis is prepared which shows the amount of taxable value under tour operator's services on which Noticee No. 1 have not paid Service Tax and which is statutorily required to be recovered from them. The said chart is as below:

