आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
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Website : www.cgstappealahmedabad.gov.in

सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20231064SW0000111E0B

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/49/2023-APPEAL /8636 – 40
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-107/2023-24 and 29.09.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	04.10.2023
(ङ)	Arising out of Order-In-Original No. 14/D/GNR/GS/2022-23 dated 30.09.2022 passed by the Deputy Commissioner, CGST, Division- Gandhinagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Yashvi Tours And Travels Pvt. Ltd., 104, Shankar Colony, Sector-25, Gandhinagar, Gujarat-382024.

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयुक्त कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Yashvi Tours And Travels Pvt. Ltd., 104, Shahkar Colony, Sector-25, Gandhinagar, Gujarat-382024 (hereinafter referred to as the *"appellant"*) against Order-In-Original No. 14/D/GNR/GS/2022-23 dated 30.09.2022 [hereinafter referred to as the "*impugned order*"] passed by the Deputy Commissioner, CGST, Division: Gandhinagar, Commissionerate: Gandhinagar [hereinafter referred to as the "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAACY7636BSD001 and engaged in the activity of Travel Agents /Tour Operators Services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in Income Tax Returns/26AS when compared with Service Tax Returns of the appellant for the period F.Y. 2016-17. In order to verify the said discrepancies, letters dated 08.05.2020 and 23.05.2020 were issued to appellant. But they didn't file any reply. It was also observed by the Service Tax authorities that the appellant didn't file the ST-3 returns for the relevant period. It was also observed that the nature of services provided by the appellant were covered under the definition of 'Service' as per Section 65B(44) of the Finance Act, 1994 , and their services were not covered under the 'Negative List' as per Section 66D of the Finance Act,1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

3. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y. 2016-17 was determined on the basis of value of 'Sales of Services under Sales/Gross Receipts from Services (Value from ITR)' as provided by the Income Tax department considering the declared amount is taxable income, the service tax liability is calculated for the relevant period as per details below:

TABLE

(Amount in Rs.)

S. No.	Details	F.Y. 2016-17 (in Rs.)
1	Total Income as per ITR-5	88,22,473/-
2	Sale of service as per STR	0
3	Difference of Value	88,22,473/-

4	Service Tax along with Cess (@15% for the year 2016-17)	13,23,371/-
5	Net Amount of Demand Rs.	13,23,371/-

4. The appellant was issued a Show Cause Notice vide F.No. V/04-99/O&A/SCN/Yashvi/20-21 dated 24.06.2020, wherein it was proposed to:

- Demand and recover service tax amounting to Rs.13,23,371/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act,1994 ;
- Impose penalty under Section 76, 77(2), 77(3)(c) and 78 of the Finance Act, 1994;

5. The said Show Cause Notice was adjudicated vide the impugned order wherein:

- Service Tax demand amounting to Rs.11,73,371/- was confirmed under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and the amount of Rs.72,214/- already paid by the appellant was ordered to be appropriated.
- Penalty amounting to Rs.11,73,371/- was imposed under Section 78 of the Finance Act, 1994;
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994 ;

6. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on following grounds:

- The appellant are providing services as 'Air Travel Agent' and they had booked air tickets on behalf of their customers. They acted as Pure Agent to their customers and collected 'service charges' in consideration for their services from customers. As shown in Audited Balance sheet & Profit & Loss A/c submitted during assessment proceedings, total receipt of Rs. 88,22,473/- bifurcation as under:

Sr. No.	Particulars	Amount
1	Services charges and commission income	15,00,825/-
2	Air ticket booked on behalf of customers shown as sales of service	73,21,648/-
Total		88,22,473/-

- This has been paid by them as a Pure Travel agent to their customers. This value is specifically exempted as per section 67 of Finance Act, 1994 and Rule 5(1) & 5(2) of the Valuation Rules.
- The Adjudicating officer has erred in law and on facts by ignoring section 67 of the Act, Rule 5(1) and 5(2) of the Valuation Rules, 2006. As per Rule of the Valuation Rules, if some expenditure is incurred by a service provider as a pure agent of the recipient of service, and the transaction under which such expenditure has been incurred satisfies certain conditions, such expenditure or costs can be excluded from the taxable value of service. Thus Rs. 73,21,648/- which is expended by the appellant as Pure agent for Air ticket fairs will not be included in total value of taxable services.
- The Adjudicating officer has erred in law and on facts in making above additions without giving an adequate opportunity of being heard and not observing the principal of natural justice.
- The appellant has paid all the service tax on his commission and service charge income and presented it during the course of assessment. Thus penalty should also be waived off.

7. Personal hearing in the case was held on 15.09.2022. Shri Ajeetsingh Shekhawat, Chartered Accountant, appeared for hearing as authorized representative of the appellant. He reiterated the submissions made in their appeal memorandum and submitted an additional written submission with supporting documents during the course of hearing for consideration. He further stated that the appellant is an air travel agent who booked the tickets on behalf of the customers and received payments which included cost of the ticket plus service charge. However, the adjudicating authority has demanded tax on the entire value including cost of the air ticket. He submitted the sample copy of air ticket, purchase ledger, Balance Sheet and ITR are attached with the additional submissions. Based on the above, he requested to set aside the impugned order.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, additional written submissions and materials available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming the demand of Service Tax amounting to Rs. 11,73,371/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F. Y. 2016-17.

8.1 It is observed that the appellant are registered with the department. However, the SCN in the case has been issued entirely on the basis of data received from the Income Tax department. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is re-produced as under :

Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)
CX & ST Wing Room No.263E,
North Block, New Delhi,

Dated- 21st October, 2021

To,
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr. Director General DGGI

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authoritiesreg.
Madam/ Sir,

...

2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 01.04.2021 and 23.04.2021 issued vide F.No.137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently.

...

It is observed that the SCN in this case was issued in gross violation of the directions imparted vide above Instruction, indiscriminately without any verification of the facts.

9. It is also observed from the documents submitted by the appellant that they have filed their ST-3 Returns regularly during the period F.Y. 2016-17 and their assessment was never disputed by the department. This implies that the appellant have made complete disclosures before the department and the department was aware about the activities being carried out by the appellant and these facts are not disputed. However, the demand of service tax was confirmed vide the impugned order under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 vide the impugned order, invoking the extended period of limitation.

9.1 In this regard, I find it relevant to refer the decision of the Hon'ble Supreme Court of India in the case of *Commissioner* v. *Scott Wilson Kirkpatrick (I) Pvt. Ltd.* - *2017 (47) S.T.R. J214 (S.C.)]*, wherein the Hon'ble Court held that *"...ST-3 Returns filed by the appellant wherein they .... Under these circumstances, longer period of limitation was not invocable".*

9.2 Further, the Hon'ble High Court of Gujarat in the case of *Commissioner v. Meghmani Dyes & Intermediates Ltd. reported as* 2013 (288) ELT 514 *(Guj.)* ruled that *"if prescribed returns are filed by an appellant giving correct information then extended period cannot be invoked".*

9.3 I also rely upon the decision of various Hon'ble Tribunals in following cases :

(a) *Aneja Construction (India) Limited* v. *Commissioner of Service Tax, Vadodara* [2013 (32) S.T.R. 458 (Tri.-Ahmd.)]

(b) *Bhansali Engg. Polymers Limited.* v. *CCE, Bhopal* [2008 (232) E.L.T. 561 (Tri.-Del.)]

(c) *Johnson Mattey Chemical India P. Limited* v. *CCE, Kanpur* [2014 (34) S.T.R. 458 (Tri.-Del.)]

9.3 In view of the above findings and following the judicial pronouncements, I find that the impugned order was passed in clear violation of the settled law and is therefore legally incorrect, unsustainable and liable to be set aside on these grounds alone.

10. It is observed that the appellant was engaged in providing services of 'Air Ticket Booking' and 'Accommodation in hotels, inn, guest house, club or camp site etc. Service' during the period F.Y. 2016-17. They have filed their ST-3 Returns during the relevant period and declared their services as 'Accommodation in hotels, inn, guest house, club or camp site etc. Service'. However, it is also observed that they have declared 'NIL' taxable value of services provided during the said period. The demand was confirmed by the adjudicating authority on the basis of the fact that the appellant have not submitted any document/invoice/reconciliation statement as evidence to show that their income is not liable for payment of service tax. The appellant has claimed benefit under Notification No. 22/97-ST, dated 26.06.1997, whereas the said notification has been rescinded vide Notification No. 34/2012-ST dated 20.06.2012. Hence, this claim of the appellant was rejected by the adjudicating authority being inadmissible.

11. As regards the issue of demand of Service Tax on the taxable value amounting to Rs.15,00,825/-, which was confirmed on account of the said amount being earned as 'Commission Income' by the appellant by way of bulk booking of domestic and international air tickets through other Travel Agents / IATA Agents. The appellant had, by bulk booking of tickets, facilitated the IATA Agents in furtherance of their business and for this they had received "Commission", which is covered within the ambit of definition of Service as defined under Section 65B(44) of the Finance Act,1994 and were held to be taxable. However, in terms of explanation appended to Rule 6(7) of the Service Tax Rules, 2002 it is clarified that, once the tax was paid on gross value, there was no need for payment of Service Tax on 'Commission Income'. The relevant Explanation to Rule 6(7) of the Service Tax Rules,2002 reads as under:

> *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.*

11.1 I find that in respect of the dispute regarding the 'Commission Income' earned by the appellant by way of bulk booking of domestic and international Air Tickets through other Travel Agents / IATA Agents, I am of the considered view, when Service Tax has been discharged on the entire amount under Rule 6 (7) of the Service Tax Rules, 2002, then there is no grounds for charging Service Tax on the amount which the appellant was receiving by way of bulk booking commission. The inferences drawn by the adjudicating authority for confirming the demand on the taxable value of Rs. 15,00,825/- is not legal and proper and is required to be set aside.

12. As regards the issue of demand of Service Tax on the taxable value amounting to Rs.73,21,648/-, the appellant have claimed that the said amount was expended by them as 'Pure Agents' and therefore in terms of Rule 5(1) and Rule 5(2) of the Valuation Rules, 2006 the said amount is not includible in computation of taxable value. In order to have a better understanding the relevant portions of the the Valuation Rules, 2006 is reproduced as under :

> *SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006*
> *[Notification No. 12/2006-S.T., dated 19-04-2006 as amended by Notification No. 24/2006-S.T.,*
> *dated 27-06-2006, 29/2007-S.T., dated 22-05-2007, 15/2010-S.T., dated 7-02-2010, 2/2011- Service Tax dated 1-3-2011 w.e.f. 1.4.2011, 24/2012-ST, dated 6.06.2012 w.e.f. 1.7.2012.]*

In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:

1. Short title and commencement.–

(1) These rules may be called the Service Tax (Determination of Value) Rules,2006.

(2) They shall come into force on the date of their publication in the Official Gazette.

...

5. Inclusion in or exclusion from value of certain expenditure or costs.–

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation1.–For the purposes of sub- rule (2), "pure agent" means a person who–

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

12.1 Upon examining the above legal provisions with the facts and circumstances of the case, I find that in the instant case the appellant stands as the 'Service Provider', the individual/corporate Customers are the ultimate Service Receivers and the Airlines (whose tickets are booked) are as the 'Third Party'. Further, considering the role of each of these entities in the above referred transaction, I find that the conditions specified vide Rule-5(2) of the SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006, as amended are fulfilled and therefore, the amount of Rs.73,21,648/- merits exclusion from 'Taxable Value'. Therefore, the amount of Service Tax levied and confirmed by the adjudicating authority on the said amount vide the impugned order is legally incorrect and liable to be set aside.

13. In view of the discussions carried out in the foregoing I am of the considered view that demand of Service Tax amounting to Rs. 11,73,371/- confirmed vide the impugned order is legally incorrect and liable to be set aside. As the demand of service tax fails to sustain, the question of interest and penalty does not arise.

14. Therefore, the impugned order is set aside and the appeal filed by the appellant is allowed.

15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the *appellant* stands disposed of in above terms.

(SHIV PRATAP SINGH)
Commissioner (Appeals)

Dated: 29 Sept, 2023

सत्यापित /Attested:

(Somnath Chaudhary)
Superintendent (Appeals)
CGST, Ahmedabad.

By REGD/SPEED POST A/D

To,
M/s Yashvi Tours And Travels Pvt. Ltd.,
104, Shahkar Colony, Sector-25,
Gandhinagar, Gujarat-382024.

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Deputy/Assistant Commissioner, CGST & C.Ex., Division-Gandhinagar, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.