



आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : V2(ST)3/North/Appeals/ 18-19

3307/10
3311

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP- 4-18-19

दिनांक Date : 27-Apr-18 जारी करने की तारीख Date of Issue 29/5/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No 01/ADC/2018/RMG Dated 29-Jan-18 Issued by **Additional Commissioner** , Central GST , Div-VII , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s Akshar Travels Private Limited

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में 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) और साथ में जिस स्थान में न्यायाधिकरण का न्यायापीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा **अधीक्षक** केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्तें यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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.



ORDER IN APPEAL

M/s. Akshar Travels Pvt. Ltd., 21, 2nd Floor, City Centre, Nr. Swastik Cross Roads, Navrangpura, Ahmedabad (hereinafter referred to as 'the appellants') have filed an appeal against the Order-in-Original number 01/ADC/2018/RMG dated 29.01.2018 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central Excise and CGST, Ahmedabad-North (hereinafter referred to as 'adjudicating authority');

2. The facts of the case, in brief, are that the appellants were holding Service Tax Registration number AAFC4359JSD001 under Tour Operator and Accommodation in hotels, inn, guest house, club or camp site etc. services. However, during the course of audit, for the years 2010-11 to 2013-14, it was noticed that the appellants had failed to obtain registration for the services of Air Travel Agent, Hotel Booking, Train Booking, Rent-a-Cab, Mandap Keeper and other Business Auxiliary Services like Visa Services, TAC Services, Commission Agents etc. rendered by them during the F.Y. 2010-11 to 2013-14. The appellants were also found to have evaded payment of Service Tax on Tour Operator Services and Legal Consultancy Services. It was also noticed that they had not paid Service Tax on domestic as well as international tour package, though the services rendered to their clients were situated within the taxable territory of India. The issues pointed out by the audit officers were approved in the MCM and the case was referred to the Service Tax Commissionerate, Ahmedabad. Accordingly, the premises of the appellants was visited by the preventive officers of Service Tax Commissionerate, Ahmedabad for further investigation in the matter. After detailed investigation and scrutiny of documents, it was revealed that the appellants were availing abatement from gross amount charged for determination of value of taxable service provided by them and were discharging their Service Tax liabilities without availing the CENVAT credit available on their input services. It was further noticed that they were not paying Service Tax under Reverse Charge Mechanism on Legal Consultancy Services. The appellants, it was further seen that, even after charging and collecting Service Tax, failed to properly deposit the amount of Service Tax leviable. After noticing several discrepancies, a show cause notice, dated 19.10.2015, was issued to them which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 1,02,69,038/- under Section 73 of the Finance Act, 1994 by invoking extended period of five years. He also ordered to recover interest under the provisions of Section 75 of the Finance Act, 1994. The adjudicating authority further imposed penalties under Section 77 of the Finance Act, 1994 (₹ 10,000/- for failure to obtain registration under Tour Operator Services and Legal Consultancy Services and ₹ 10,000/- for failure to furnish periodical



ST-3 returns), ₹ 1,02,69,038/- under Section 78 of the Finance Act, 1994 and personal penalty of ₹ 50,000/- on the Managing Director of the company.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. The appellants have argued that the adjudicating authority has travelled beyond the scope of the show cause notice. In the show cause notice, ₹ 66,67,591/- was confirmed under the category of Accommodation in Hotels, Inn, Guest House, Club or Campsite etc. However, in the impugned order, same has been classified under the category of Tour Operator Service. Thus, they argued that they are not liable to pay Service Tax and therefore; the Service Tax has been wrongly confirmed against them along with interest and penalty.

4. Personal hearing in the matter was granted and held on 26.04.2018. Smt. Pooja Sheth and Smt. Bhagyashree Bhatt, both Chartered Accountants, appeared before me, on behalf of the appellants, and reiterated the contents of appeal memo. The Chartered Accountants argued that the show cause notice was for short term accommodation however, same was changed in the impugned order to tour operator and the CENVAT credit has been denied. No ground has been mentioned for the change. The Chartered Accountants did not contest rest of the issues.

5. I have carefully gone through the facts of the cases on records, grounds of the Appeal Memorandum, and oral submissions made by the appellants at the time of personal hearing. I find that there are eight different issues that have enveloped the entire case. The issues are mentioned as below;

(i) The appellants had not paid/short paid, Service Tax, amounting to ₹ 51,15, 274/- during the period from 2010-11 to 2014-15 under the category of "Tour Operator Services" till initiation of inquiry by the department.

(ii) The appellants had not paid/short paid, Service Tax, amounting to ₹ 5,04,922/- during the period from 2010-11 to 2014-15 under the category of "Tour Operator Services" (arranging and booking accommodation) till initiation of inquiry by the department.

(iii) The appellants had not paid/short paid, Service Tax, amounting to ₹ 46,22,493/- during the period from 01.07.2012 to 2014-15 under the category of "Tour Operator Services" (international tour package) till initiation of inquiry by the department.

(iv) The appellants had not paid/short paid, Service Tax, amounting to ₹ 22,410/- during the period from 2010-11 to 2014-15 under the



category of "Air Travel Agent Service" till initiation of inquiry by the department.

(v) The appellants had not paid/short paid, Service Tax, amounting to ₹ 1,18,068/- during the period from 2010-11 to 2014-15 under the category of "Transport of Passengers by Air" (visa charges) till initiation of inquiry by the department.

(vi) The appellants had not paid/short paid, Service Tax, amounting to ₹ 1,88,674/- during the period from 2010-11 to 2014-15 under the category of "Business Auxiliary Service" till initiation of inquiry by the department.

(vii) The appellants had not paid/short paid, Service Tax, amounting to ₹ 66,67,591/- during the period from 2010-11 to 2014-15 under the category of "Accommodation in Hotels, Inn, Guest House, Club or Campsite etc." till initiation of inquiry by the department.

(viii) The appellants had paid legal charges during the period from 2010-11 to 2014-15 on which they did not pay Service Tax to the tune of ₹ 25,345/- under the category of "Legal Consultancy Services" under Reverse Charge Mechanism.

I find that the department had quantified a total amount of ₹ 1,72,39,432/- as Service Tax collected but did not paid by the appellants in the Government exchequer and an amount of ₹ 25,345/- as Service Tax did not paid by them under Reverse Charge Mechanism. Further, I find that out of the above amount, the appellants had paid an amount of ₹ 69,95,739/- during the initiation of inquiry by the Service Tax department. Thus, the issue revolves around the remainder amount of ₹ 1,02,69,039/- which the adjudicating authority has confirmed along with interest and penalties. I further find that the appellants have not contested any of the above issues, in their grounds of appeal and during the course of personal hearing, except the amount of ₹ 66,67,591/- as mentioned in serial number (vii) above. Thus, I will now take up the issue mentioned in serial number (vii) above involving ₹ 66,67,591/-, on merit and discuss the same elaborately.

6. At the onset, I find that the show cause notice has demanded Service Tax amounting to ₹ 66,67,591/- as the appellants had collected gross amount of ₹ 8,99,08,181/- (inclusive of Service Tax) from their customers under "Accommodation in Hotels, Inn, Guest House, Club or Campsite etc." After allowing abatement of ₹ 3,59,63,272/-, the taxable amount was quantified to ₹ 5,39,44,909/- on which Service Tax of ₹ 66,67,591/- was demanded from them. The appellants argued before the adjudicating authority that for providing the above service, they availed the services of M/s. Lallooji & Sons for renting of tents. Since, the said service was input



service for them, they were eligible for credit amounting to ₹43,35,222/-. The adjudicating authority, after verifying the documents submitted by the appellants, concluded that the appellants were providing 'Tour Operator Service' and hence, not eligible for the input service credit. In their grounds of appeal and during personal hearing, the appellants have not contested their Service Tax liability but their only argument is that the adjudicating authority has travelled beyond the scope of the show cause notice.

6.1. Now, on going through the show cause notice and the impugned order, I find that the show cause notice has alleged that the appellants have collected Service Tax under the category of "Accommodation in Hotels, Inn, Guest House, Club or Campsite etc." whereas, the adjudicating authority has concluded that the service is nothing but of a tour operator. In this regard, I would like to discuss below the definition of Tour Operator as defined in Section 65 of the Finance Act, 1994;

*"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 or the rules made thereunder.*

Explanation.- For the purposes of this clause, the expression "tour" does not include a journey organised 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;]

Thus, from the above, it is very clear that the main services, a tour operator provides, plan, schedule and organizing the tour. The arrangement of accommodation is optional (that is why the word "may" is included). Thus, the arrangement of accommodation is incidental to the tour. The main requirement of being tour operator is "arranging tour by any mode of transport". Short term accommodation service has been listed in the category of "Accommodation in Hotels, Inn, Guest House, Club or Campsite etc." which was introduced w.e.f. 01.05.2011 vide Notification number 29/2011-ST dated 25.04.2011. The definition of the said service is posted below for better understanding;

"Taxable service, means any service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months."



Thus, I find that the service provided by the appellants should fall under the category of Accommodation in Hotels, Inn, Guest House, Club or Campsite etc. instead of Tour Operator Service. In fact, the adjudicating authority, in paragraph 15.1 of the impugned order, has very clearly mentioned that the appellants were procuring short term accommodation (tent) at campsite for lodging purpose on rent from M/s. Lallooji & Sons. However, strangely, he finds such accommodation was in relation to a tour. How the adjudicating authority comes to this conclusion is unknown as has not taken any pain to elaborate his finding and explaining the facts with evidence. He has taken the shelter of mere assumption and presumption to deny the benefit of input credit to the appellants.

6.2. Thus, in view of the above discussion, I consider that the adjudicating authority has wrongly denied the benefit of input service credit to the appellants and hence, this part of the impugned order needs to be set aside. Therefore, I set aside only the denial of input service credit part of the impugned order and give my consent to the appellants their right to avail the benefit of the input service credit amounting to ₹43,35,222/- as quantified in the impugned order. Regarding the Service Tax liability part of the case, I find that the appellants have not contested the same, therefore I consider that they have not paid/short paid an amount of ₹66,67,591/- as Service Tax and are liable to pay the same.

7. For rest of the seven issues mentioned in paragraph 5 above, I do not find any reason to interfere in the impugned order, as the appellants have not contested any, and hence, reject the appeal filed by the appellants.

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

8. The appeal filed by the appellants stands disposed off in above terms.

(उमा शंकर)

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

(S. DUTTA) 28/05/18

SUPERINTENDENT,

CENTRAL TAX (APPEALS),



To,
M/s. Akshar Travels Pvt. Ltd.,
21, 2nd Floor, City Centre,
Nr. Swastik Cross Roads, Navrangpura,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Central Tax, Division-VII, Ahmedabad-North.
- 4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad-North.
- 5) Guard File.
- 6) P. A. File.

