
	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015		टेलीफैक्स : 079 - 26305136	
079-26305065			

क फाइल संख्या : File No : **V2(ST)0211/A-II/2016-17/1523 to 1524**
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-092-17-18**
 दिनांक Date : 27-09-2017 जारी करने की तारीख Date of Issue **10-10-17**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **STC/05/KM/AC/Div III/15-16** Dated **09.11.2016**
 Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

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

M/s. Utopia Travel Services Pvt Ltd
Ahmedabad

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 :-

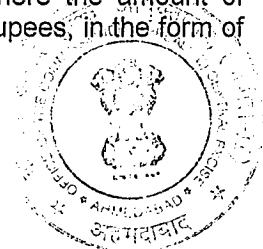
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

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 न्यायपीठ 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 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 A219K 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, 1994 की धारा 39 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते 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 हैं -

- (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 बशर्ते 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 होगा।

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,

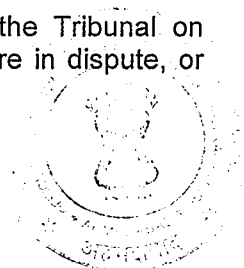
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 Utopia Travel Services Pvt. Ltd., Ahmedabad (*hereinafter referred to as 'the appellant'*) has filed the present appeal against the Order-in-Original number STC/05/KM/AC/D-III/15-16 dated 09.11.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-III, Ahmedabad (*hereinafter referred to as 'the adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are engaged in providing services under the category of 'Air Travel Agent' and "Rail Travel Agent" and holding Service Tax Registration. During the course of service tax audit of the said appellant, it was noticed that they have made short payment of service tax under "business Auxiliary Service" during the period covered under audit which has revealed that on reconciliation of figures of taxable income as reflected in their books of accounts vis-a-vis taxable value declared in their half yearly ST-3 returns filed. The appellant has claimed deduction of Computer Reservation System (CRS) commission on the ground that they have already been issued show cause notice and Order in Original for the said period. However when they were asked to produce the copies of such show cause notice and order in original but they did not produce. The Central Board of Excise & Customs, vide D.O.F. No. 334/8/2016-TRU dtd. 29.02.2016 has clarified the issue and has said that the service provided by CCRS is to the Airlines and Air Travel Agent is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (Section 66D of the finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same. Accordingly, a show cause notice was issued to the appellant demanding, among other things, service tax of Rs. 2,19,391/- which was confirmed by the then adjudicating authority vide the impugned order.

3. Being aggrieved by the impugned order, the appellants have preferred this appeal on the following grounds:

(a) they were not an agent of M/s Uniglobe Travel (South Asia) Pvt. Ltd., they are only subscriber of the software access;

(b) as per basic principle of levy of service tax, there has to be provision of service by one person to another person and in the instant case, the travel agents do not provide any service to the GDS companies and the service tax can be levied only when the relationship between two persons is that of appellant and service recipient;

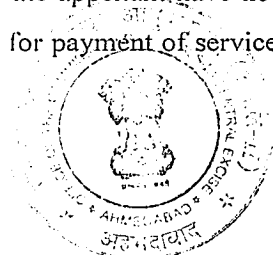
(c) they were in receipt of incentive fixed as per terms in lieu of loyalty (i.e. usages of 100% their system exclusively only). So the appellants were not in receipt of any incentive on usages basis. It is fixed amount and loyalty incentive for usages of their system. So it was never connected with their marketing and promotion of business of CRS company.

(d) that by merely using Amadeus provided by CRS while carrying on with its own business activity of booking tickets for air travel/hotel accommodation/ car rental agencies resulting in higher volumes on the CRS i.e. Amadeus, the travel agent is not promoting the business of CRS company;

(e) the demand is time barred;

(f) penalty cannot be imposed under Section 78 of the Finance Act, 1994 as the appellant have not suppressed any information from the department and there was no wilful misstatement;

(g) penalty cannot be imposed under Section 77 of the Finance Act, 1994 as the appellant have not short paid the service tax as as per merits of the case, the appellants is not liable for payment of service



tax;

(h) that the department has raised demand by not allowing the deduction of accrued sales but not due from the total income in the year 2013-14:

(i) they sought support from reliance on the cases of CESTAT, Mumbai in the case of Abacus Distribution System (India) Pvt. Ltd. Vs. commr of S.T, Mumbai-I - 2015 (40) S.T.R. 190 (Tri.-Mumbai), Acquire Services Pvt. Ltd. Vs. Commr of S.T., Delhi - 2014 (36) STR 1148 (Tri. - Del), Regional Manager. Tobacco Board Vs. Commr of C.Ex., Mysore - 2013 (31) STR 673 (Tri. - Bang.), Anvil Capital Management Pvt. Ltd. Vs. Commr of S.T., Mumbai - 2010 (20) STR 789 (Tri. - Mum), Commr of S.T., Ahmedabad vs. Purni Ads. Pvt. Ltd. - 2010 (19) STR 242 (Tri. - Ahm) and some other cases.

4. Personal hearing in the matter was granted and held on 07.09.2017. Shri Vipul Khandhar, Chartered Accountant, represented the appellants and reiterated the grounds of appeal and stated that in earlier case with similar matter, an order was passed in their favour. He also submitted additional written submission.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and written submissions made by the respondents at the time of personal hearing.

6. In this regard, the main issue before me is that whether the service offered by the respondents is taxable or otherwise. I find that M/s. Amadeus India Pvt. Ltd. is involved in the business of CRS and they are functioning as the national Marketing Company for conducting the business of marketing and distribution of the CRS Company through the system. They have further entered into agreement with other agencies for marketing and promotion of the services rendered by foreign based CRS companies in India in exchange for a support fee. The support fee represents usage based transaction fee paid by the CRS companies to Air Travel Agents. The Air Travel Agents use the CRS to book tickets and serve their customers who purchase air tickets. The entire system and nature of service is specified in consideration or support fee, marketing and promoting business as CRS companies. I find that in the instant case, the respondents have received certain amount which is nothing but incentive/ commission received from M/s. Amadeus India Pvt. Ltd for the services rendered by the former to the latter which falls in the ambit of the definition of Business Auxiliary Service. Thus, I find that the commission received by the respondents is a taxable service and the amount charged by them for providing the said service is the taxable value liable to Service Tax as per the provisions laid down in the Finance Act, 1994 under the category of Business Auxiliary Service. In conclusion, I would like to quote the contents as mentioned in para 15 of the Board's letter number 334/8/2016-TRU dated 29.02.2016, as below;

"15.1 Incentives received by air travel agents from computer reservation system companies (CCRS)

15.1.1 High Level Committee (HLC) in their Second Half early Report in December 2015 have stated that Air Travel Agents (ATA) reportedly have been representing to CBEC since 2012 for a clarification about levy of service tax on the incentives received by them from the Companies providing Computer Reservation System (CCRS) like Galileo, Amadeus, etc. The CCRS do not charge any amount for providing access to their internet system for booking of air tickets by the ATAs. Rather, the CCRS are providing certain incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system.



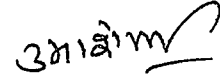
15.1.2 It is clarified that incentives received by the Air Travel Agents (ATAs) from the Companies providing Computer Reservation System (CCRS) are for using the software and platform provided by the CCRS like Galileo, Amadeus, etc. The CCRS are providing these incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system. Thus, the service provided by CCRS is to the Airlines and Air Travel Agent is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (Section 66D of the Finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same".

Further I also find support from the case of D. PAULS CONSUMER BENEFIT LTD. Versus Comm'r Of C. Ex., New Delhi - 2017 (52) S.T.R. 429 (Tri. - Del.) in which it was held that the commission/incentive is liable to service tax.

7. In view of the facts and discussions hereinabove, I find no reason to interfere with the impugned order and the appeal is rejected.

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

The appeals filed by the appellant stand disposed off in above terms.




(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

अहमदाबाद.

Date: 27. 09. 2017

ATTESTED


(D. UPADHYAYA)
SUPERINTENDENT (APPEALS).
CENTRAL GST, AHMEDABAD.

BY R.P.A.D.

M/s. Utopia Travel Services Pvt. Ltd.,
Plot No. 404-Abhigam Complex,
Near Parimal Garden.
Opp. Doctor House.
Ahmedabad-38015

Copy To:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (South).
- (3) The Assistant Commissioner, CGST, Div-VI, Ahmedabad (South)
- (4) The Assistant Commissioner, Systems, CGST, Ahmedabad (South)
- (5) Guard File.
- (6) P.A. File.

