



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)171/Ahd-South/2018-19 | 10650 to 10654

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-07-2019-20
दिनांक Date : 17-05-2019 जारी करने की तारीख Date of Issue _____ 21/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/DN-VI/06/DEM/SKC/All Four/18-19 दिनांक:
21.12.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**All four season Travels
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) 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.

(b) 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।



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

(b) 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।

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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।

(d) 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.

(1) 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 दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



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. Registrar 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 आदेश 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 है।

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 संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is 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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, 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.

इस 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."



ORDER IN APPEAL

M/s. All Four Season Travels, 51, Sardar Patel Nagar, B/h Navrangpura Telephone Exchange, Opp. NABARD Vihar Flats, Ellis Bridge, Ahmedabad (*hereinafter referred to as 'the appellant'*) have filed the present appeal against Order-in-Original No. CGST/DIV-VI/06/DEM/SKC/All Four/18-19 dated 21.12.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Division-VI, Ahmedabad (South).

2. The facts of the case, in brief, are that the Appellants are engaged in the activity of booking of airlines ticket which include domestic as well as international tickets covered under the definition of "Air Travel Agent Service", for which they are holding Service Tax Registration. The audit of the tax records revealed that the appellant were engaged in evasion of Service Tax by way of not paying Service Tax on commission for Computer Reservation System for the period from April-2012 to June-2012. They had received CRS commissioner amounting to Rs. 8,78,675/- from M/s Ammadeus India Pvt. Ltd. it was revealed during enquiry that incentives are provided to travel agents in order to install and use such system by respective CRS to book tickets and serve their customers who purchase airline tickets. The entire system and nature of service is against specified consideration or support fee for marketing and promoting business as CRS company. It was found that the appellant were using Amadeous CRS software for carrying out their business for booking/selling tickets and this activity is one type of marketing and promoting of business and squarely falls within the ambit of "business auxiliary service" which is defined under Section 65 (19) of the Finance Act, 1994 (for brevity "the Act") and therefore the CRS commission received by the appellant is liable for service tax. Accordingly a show cause notice dtd. 03.05.2017 demanding service tax amounting to Rs. 1,08,604/-



with interest and also proposed imposition of penalties u/s 77 (2) and 78 of the Act. The adjudicating authority confirmed the said notice vide the impugned order and confirmed the recovery of Service Tax amount of ₹ 1,08,604/-, as demanded in the show cause notice, under Section 73(1) read with Section 68 of the Finance Act, 1994. He also ordered for the recovery of interest under Section 75 of the Finance Act, 1994 and imposed penalty of Rs. 10,000/- under Sections 77 (2) and of Rs. 1,08,604/- under Section 78 of the Act.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal on the following grounds:

a) They denied that they have contravened the provisions of Sections 65, 66, 68, 70 and 73(a) of the Finance Act, 1994;

b) That they are not agent of M/s Uniglobe Travel (South Asia) Pvt. Ltd. and they are only subscriber of the software access and they do not provide any service to the CRS companies;

c) That as per the agreement, all hardware provided by the CRS companies to the travel agent will be the property of CRS company and all relevant products required for the air travel agent are provided free of cost to the agent. CRS companies do not charge any rent/fee for the use of the hardware/software;

d) That they received incentives fixed as per loyalty (i.e. usages of 100% their system exclusively only) and they were not receiving any incentive on usages basis. It is a fixed amount for using their system and therefore it was never connected with their marketing and promotion of business of CRS companies;

e) That by utilizing the CRS, the subscriber is in a position to increase its efficiency, quality of service and this leads to increased customer satisfaction resulting in higher profits. In turn as the CRS



company is used more and more, the business and market share of the vendor of Amadeus also increases. Therefore as a marketing or sales strategy, CRS companies provide incentives in cash in order to increase the use of its system and augment their own income;

f) They seek reliance on the case laws of Abacus Distribution Systems (India) Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai-I – 2015 (40) S.T.R.-190 (Tri. Mum.) and Acquire Services Pvt. Ltd. vs. Commissioner of Service Tax, Delhi – 2014 (36) S.T.R.-1148 (Tri. Del.);

g) That the entire demand is time barred as it covers the period of 01.04.2012 to 30.06.2012 and the notice was issued on 03.05.2017 whereas all the facts were in the knowledge of the department and accordingly the penalty cannot be imposed. They seek reliance on the case law of Steel Cast Ltd.- 2011 (21) S.T.R.-500 (Guj.)

5. Personal hearing in the matter was held on 02.05.2019. Shri Vipul Khandhar, Chartered Accountant, appeared before me and reiterated the grounds of appeal.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. The issue to be decided in the present case is whether or not there is a short payment of service tax on the income received as incentive/commission from CRS companies by considering the service as "business auxiliary service" or not. It has been held by the adjudicating authority in the impugned order that as they received incentives and commission from the CRS companies, they were engaged in providing marketing and promotion to them. In spite of the denial by the appellant, I find from para C.1.13 of the grounds of appeal that the appellant have themselves said that by



utilizing the CRS, the subscriber is in a position to increase its efficiency, quality of service and this leads to increased customer satisfaction resulting in higher profits and in turn CRS is used more and more and the business and market share of the CRS also increases. Therefore as a marketing and sales strategy, CRS companies provide incentives in cash in order to increase the use of their system and thereby augment their own income. It clearly proves that they are in fact providing marketing and promotional services to the CSR companies.

I find that this issue already stands clarified vide CBEC's Circular No. 334/8/2016-TRU, dated 29-2-2016 vide which it has been clarified and I reproduce the relevant part as following:

15. Certain issues clarified

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 Yearly 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.
(emphasis applied)

From the above clarification, it is clear that there is no ambiguity about the payment of service tax on the service provided by the travel agents to the CRS companies. I also find support from the case law of Jose Travels Vs. Commissioner Of Central Excise, Indore cited at 2012 (25) S.T.R. 601 (Tri. - Del.) in which it has been very clearly held and I reproduce the relevant part as follows:

“ The Travel Agents are promoting the business of CCRS who is providing service to the Airlines and the payment received by the Travel Agent from CRRS is in consideration for such service. The arguments like that the customer is the passenger and he gets only a ticket print out seen in appeal memo are not acceptable arguments. For the sake of clarity, in this case CCRS is the client of the Air Travel Agent. The service provided by CRRS is to the Airlines and the Air Travel agent is promoting the service provided to Airlines. So I agree with the argument of revenue that the service provided by the Appellants to CRRS is business auxiliary service and service tax is payable on the same.”

It is very clear from the above case law that the service provided by the appellants to CSR is business auxiliary service and service tax is payable on the same. I get further support from the case laws of Amar Travels India Vs.

Commissioner Of Service Tax, Delhi cited at 2018 (10) G.S.T.L. 77 (Tri. - Del.) and Govan Travels Vs. Commissioner Of Central Excise, Delhi cited at 2018 (9) G.S.T.L. 268 (Tri. - Del.). In view of the above circular and the citations, there is no doubt that the service provided by the appellant to the CSR is liable to payment of service



tas which they have not made. I therefore find no infirmity in the impugned order and accordingly uphold the same and reject the appeal filed by the appellant.

6.1 The appellants have relied on various decisions of Hon'ble Tribunals in support of their contention. I have gone through the same and I find that the facts of the case in those cases are totally irrelevant than the facts of the present case in as much as the case of Acquire Services Pvt. Ltd. (supra) the fact of the case was that it dealt with the issue pertaining to a particular period and it was held as follows:

"During the relevant period i.e. 1-7-2003 to 1-5-2006 "Computer Data Processing" enacted as a part of the inclusive definition of Information Technology Service, was excluded from the purview of BAS."

9. As regards penalty imposed, I find that the adjudicating authority has imposed penalty under Section 78 of the Act. While perusing the impugned order, I find that the facts and the evasion of service tax came to light only after the DGST, Mumbai visited and examined the records of M/s Ammadeus India Pvt. Ltd. and appellant never paid the service tax nor declared the amount of such commission in their ST-3 returns. It is clear that the appellant knew that they were liable to pay service tax on the commission/incentive amount yet they continued to evade payment of service tax. The provisions of the Section 78 of the Act provide that where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, a penalty equal to 100% of the service tax evaded shall be imposed.



In the impugned order, the adjudicating authority has widely discussed the circumstances under which the penalty was imposed and no interference is required in the impugned order. Therefore, I uphold the same.

10. In view of above discussion, I reject the appeal.

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

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

3/11/2019

(उमा शंकर)
प्रधान आयुक्त (अपील्स)
केंद्रीय कर, अहमदाबाद
दिनांक: . . 2019

सत्यापित

Ambar
(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद



To,
M/s. All Four Season Travels,
51, Sardar Patel Nagar,
B/h Navrangpura Telephone Exchange,
Opp. NABARD Vihar Flats, Ellis Bridge,
Ahmedabad

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Commissioner, Central Tax, Ahmedabad-South,
3. The Asstt. Commissioner, System, Central Tax, Ahmedabad-South
4. The Asstt. Commissioner, CGST, Division-VI, Ahmedabad-South
- ✓ 5. Guard File.
6. P.A.