

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद- 380015

क फाइल संख्या : File No : V2(ST) 8/RA/A-II/2015-16 & 2192 to 2197
ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-007-16-17
दिनांक Date : 21.04.2016 जारी करने की तारीख Date of Issue 22/04/16

श्री उमा शंकर,, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No. SD-02/01/AC/15-16 Date : 12.06.2015

Issued by Asstt. Commr., Div-II, Service Tax, Ahmedabad

घ प्रतिवादी का नाम / Name & Address of the Respondent

**M/s. Escape,
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 :-

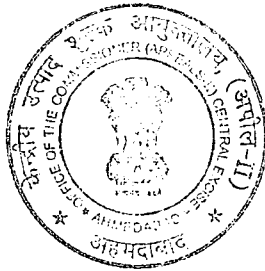
सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

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, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal
(CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound,
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 गांग, ब्याज की गांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की गांग, ब्याज की गांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की गांग, ब्याज की गांग 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 accompanied 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.

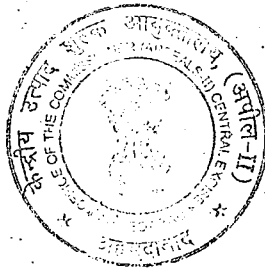
(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केंद्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219x केंद्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश दिये 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 स्थान 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 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 बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी 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,

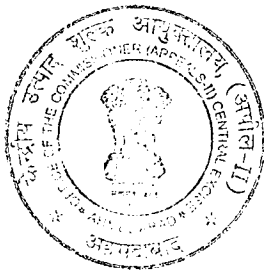
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

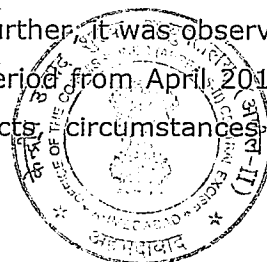


:: ORDER-IN- APPEAL ::

The Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'the appellant'*) has filed the present appeal against the Order-in-Original number SD-02/01/AC/2015-16 dated 12.06.2015 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'the adjudicating authority'*) pertaining to M/s. Escape, 201, Subh House, 77 Swastik Society, B/h. St. Xavier's Ladies Hostel, Navrangpura, Ahmedabad (*hereinafter referred to as 'respondents'*).

2. The facts of the case, in brief, are that the respondents are engaged in providing services under the category of 'Air Travel Agent' and holding Service Tax Registration No. AERPD1995CST001. They also carry out the business of booking/ selling airline tickets through Computer Reservation System (CRS) software. On examination of the functions of the CRS companies, viz. (i) M/s. ABACUS Distribution Systems (I) Ltd., (ii) M/s. Galileo India Pvt. Ltd. and (iii) M/s. Amadeus India Pvt. Ltd., it was observed that these companies were designated as the National Marketing Companies with a view to establish system for conducting the business of marketing and distribution of the CRS company through the system. These CRS companies have entered into agreement with the Air Travel Agents in marketing and promoting 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.

3. The jurisdictional Range Superintendent of Service tax issued letter to M/s. Amadeus India Pvt. Ltd., New Delhi and called for details of incentives paid to various travel agents in Ahmedabad for the year 2011-12. M/s. Amadeus India Pvt. Ltd. provided the details of the commission/ incentives paid to various travel agents. According to M/s. Amadeus India Pvt. Ltd., they had paid ₹3,05,540/- as commission to the respondents, which was held as taxable under the category of 'Business Auxiliary Service'. Thus, a show cause notice was issued to the respondents which was confirmed by the then adjudicating authority demanding an amount of ₹31,470/- as Service Tax. The order of the said adjudicating authority was set aside by the then Commissioner (Appeals-IV). Further, it was observed that the respondents had not paid Service tax for the period from April 2012 to March 2013 amounting to ₹42,707/- and as the facts, circumstances, and contraventions of the



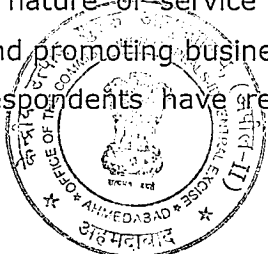
provisions of Finance Act, 1994 are similar to those mentioned in the show cause notice issued earlier, another show cause notice, dated 09.04.2014, was issued to them. The adjudicating authority dropped the entire proceeding initiated vide the above mentioned show cause notice following the order of the then Commissioner (Appeals-IV) (as mentioned above).

4. The impugned order was reviewed by the Principal Commissioner of Service Tax, Ahmedabad and issued Review Order No. 05/2015-16 dated 14.09.2015 for filing an appeal under section 84(1) of the Finance Act, 1994 on the grounds that the adjudicating authority has agreed with the contention of the respondents that the then Commissioner (Appeals) had already decided similar issue in their favour. However, the said order of the Commissioner (Appeals) was not accepted by the department on merits but on low monetary limit as per the existing instructions by the Board. The appellant further stated that when the department has not accepted the order on merit, the adjudicating authority is not bound to follow such order. Thus, the adjudicating authority has erred in placing reliance on the order of the then Commissioner (Appeals) and setting aside the demand and penalties. Thus, the appellant has requested for an order confirming the Service Tax amounting to ₹42,707/- along with interest and penalty.

5. Personal hearing in the matter was granted and held on 05.04.2016. Shri Bishan Shah, Chartered Accountant, represented the respondents, appeared before me and stated that in earlier case with similar matter, an order was passed in their favour.

6. 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.

7. 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



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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".

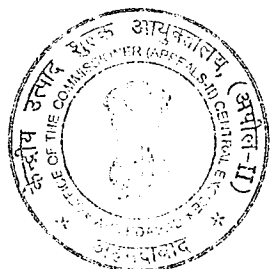
8. In view of the facts and discussions hereinabove, the appeal filed by the Department is allowed and I order to recover ₹42,707/- along with interest and penalty from the respondents.



(UMA SHANKER)

COMMISSIONER (APPEAL-II)

CENTRAL EXCISE, AHMEDABAD.



ATTESTED


(S. DUTTA) 220416

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s. Escape,
201, Subh House, 77 Swastik Society,
B/h. St. Xavier's Ladies Hostel, Navrangpura,
Ahmedabad

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Addl. Commissioner, Service Tax, Ahmedabad.
4. The Dy./Asst. Commissioner, Service Tax, Division-II, Ahmedabad.
5. The Asst. Commissioner (System), Service Tax Hq, Ahmedabad.
6. Guard File.
7. P.A. File



10

