

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
BANGALORE**

Appeal(s) Involved:

**ST/268/2009-DB**

[Arising out of Order-in-Appeal No. 10/2009 dated  
06/01/2009 passed by the Commissioner of Central Excise  
(Appeals), Mangalore.]

**BHARATH INTERNATIONAL  
TRAVELS (MYSORE)**

576, DEWAN'S ROAD, LAKSHMIPURAM,  
CHAMRAJAPURAM MOHALLA  
MYSORE - 570 004.

Appellant(s)

**Versus**

**The Commissioner of Central  
Excise and Service Tax**

S1-S2, VINAYA MARGA,  
SIDDHARTHA NAGAR,  
MYSORE - 570 011  
KARNATAKA

Respondent(s)

**Appearance:**

**Mr. S. LOKNATH, CA**

459, 'AASHIANAA', 6TH  
MAIN, 1ST STAGE, VIJAYANAGAR,  
MYSORE - 570 017.  
KARNATAKA

For the Appellant

**Dr. J. Harish,  
Dy. Commissioner (AR)**

For the Respondent

Date of Hearing: 04.10.2018

Date of Decision: 17.12.2018

**CORAM:**

**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER  
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 21912 /2018**

**Per : P. ANJANI KUMAR**

The appellants are registered under the category of Tour Operator. The department conducted audit and found that the

appellants were rendering services ranging from making tour itinerary and booking hotel accommodation. The appellants received certain commission on an agreed basis from the hotels on the payment made by the customers. The department alleged that the service rendered by the appellants falls under sub clause (ii) of 'Business Auxiliary Services' of Section 65(19) of the Finance Act, 1994. A show-cause notice dated 18.1.2007 was issued to them and was confirmed by the Asst. Commissioner of Central Excise vide order No.26/2007 dated 30.4.2007. On appeal, Commissioner (A) vide Order No.10/2009 dated 6.1.2009 has upheld the Order-in-Original. Hence, this appeal.

2. The learned counsel for the appellant contended that they carry out activity of hotel booking for their clients along with travel booking; the appellants only refer or suggest the names of the hotel at the destination; the hotel management sometimes in appreciation sends some amount and as such, they are not working as agents of the hotel. The payment is out of the room rentals paid by the customers. The amount is already charged to luxury tax. The activity undertaken by them does not come under Promotion or Marketing, going by the definitions of Promotion and Marketing given in Webster's Dictionary. He also submitted that

two show-cause notices were issued, one on 14.11.2005 and the second one on 18.1.2007, which shows that the department itself is not clear as to which clause of Section 65(19) of the Business Auxiliary Services.

3. The learned AR reiterated the findings of the impugned order.

4. Heard both sides and perused the records.

4.1 We find that Business Auxiliary Services as defined under Section 65(19) of the Service Tax means “*any services in relation to:*

1. *Promotion or marketing or sale of goods produced or provided by or belonging to the client; or*
2. *Promotion or marketing of service provided by the client; or*
3. *Any customer care service provide on behalf of the client; or*
4. *Procurement of goods on behalf of the client; or*
5. *Production of goods on behalf of the client; or*
6. *Provision of service on behalf of the client; or*
7. *A service incidental or auxiliary to any activity specified in sub clauses 1 to 6 such as billing, issue or collection or recovery of cheques, payment, maintenance of accounts and remittances, inventory management valuation or development of prospective customer or vendor, public relation services, management or supervision.*

*And includes services as a commission agent, but include any information technology services and any activity that amounts to*

*manufacture within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944.*

4.2 In the instant case, the appellants are suggesting the names of the hotels to their customers to whom they are also booking travelling facilities and arranging for the itineraries. The appellants are receiving certain amounts from the hotels on the event of the customers checking into the hotels and paying room rents, etc. This activity certainly falls in the category of 'Promotion or Marketing of service provided by the client' falling under (2) above. By suggesting or referring the names of hotels, the appellants are indirectly promoting the service rendered by the respective hotels. It is not the appellants case that the hotels are paying them a discount or commission *ex gratia*. We find that the original adjudicating authority has correctly found that "the amount received by the appellants is monetary benefit in turn to the service rendered, by giving lead to their guests or clients to various hotels". We do not find that the definition of Promotion and Marketing submitted by the appellants relying on Webster's Dictionary would be of any help to them in view of the categorical and clear mention of Promotion or Marketing of service under Business Auxiliary Services. In view of the above, we find no

merit in the appeal filed by the appellant and we do not find any necessity to interfere with the impugned order.

5. In view of the above, the appeal is dismissed.

(Order was pronounced in Open Court on **17.12.2018.**)

**P. ANJANI KUMAR**  
**TECHNICAL MEMBER**

**S.S GARG**  
**JUDICIAL MEMBER**

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