CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

<u>Appeal(s) Involved:</u>

ST/415/2009-DB

[Arising out of Order-in-Appeal No. 5/2009 dated 05/01/2009 passed by the Commissioner of Central Excise, Mangalore]

FCM Travel Solutions (India) Pvt. Ltd. (Formerly known as M/s. Friends Globe Travels Ltd.) 8-9, Mythri Arcade, Kantharaje Urs Road, I Main, Saraswathipuram, Mysore – 570 009	**Appellant(s)**

VERSUS

Commissioner of Central Excise, Customs and Service Tax Mysore S1-S2, Vinaya Marga, Siddhartha Nagar, Mysore – 570 011 Karnataka	**Respondent(s)**

<u>Appearance:</u>

Mr. Mohammed Ibrahim, Advocate World Trade Centre No.404-406, 4th Floor, South Wing Brigade Gateway Campus No.26/1, Dr. Rajkumar Road, Bangalore - 560 055 Karnataka	For the Appellant
Mr. K.B. Nanaiah, Asst. Commr. (AR)	For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20577 / 2019

Date of Hearing: 19/07/2019
Date of Decision: 19/07/2019

Per: S.S GARG

The present appeal is directed against the impugned order dated 05.01.2009 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal but dropped the penalty imposed under Section 76 of the Finance Act, 1994. Briefly the facts of the present case are that the appellants are registered service providers in the category of 1) Air Travel Agency Service, 2) Rail Travel Service, 3) Tour Operator 4) Cab Operator booking. Department gathered intelligence that the appellants had wrongly availed the benefit of abatement of taxable service, and conducted further investigation. It was noticed that the appellants had availed cenvat credit of service tax paid on input services and also availed abatement of value of taxable service which was contrary to the conditions laid down in the Notification No. 1/2006 ST dated 01.03.2006. Accordingly show-cause notice dated 17.05.2007 was issued proposing to reject the abatement claimed and to demand service tax of Rs. 1,59,737/- (Rupees One Lakh Fifty Nine Thousand Seven Hundred and Thirty Seven only) for the period 01.03.2006 to 31.01.2007. After following the due process, the original authority held that the appellant had availed cenvat credit on input services namely mobile phones, telephones, banking, courier etc which was common for providing all the four services. Aggrieved by the said decision, the appellant filed appeal before the Commissioner who rejected the appeal.

2. Heard both the parties and perused the records.

3. Learned counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellants are not taking credit on input services used exclusively for Tour Operator Service and Rent-a-Cab Service. He further submitted that the appellants have availed credit on some common input services such as Security Service, Courier Service, Telephone Service as it is impossible to maintain separate accounts. He also submitted that the input service credit attributable to Tour Operator Service and Rent-a-Cab Service has been subsequently reversed vide journal voucher dated 19.01.2008. It is his further submission that on similar facts and issue in dispute, this Tribunal in appellants own cases for the subsequent period remanded the matter to the original authority to verify whether the appellants have reversed the credit and subject to verification extended the benefit of abatement Notification.

a. *FCM Travel Solutions India Pvt. Ltd. V. CST, Bangalore, Final Order No. 20187/2014 dated 06.02.2014*
b. *FCM Travel Solutions India Pvt. Ltd. V. CST, Bangalore, Final Order No. 21057/2014 dated 03.07.2014*
c. *FCM Travel Solutions India Pvt. Ltd. V. CST, Bangalore, Final Order No. 22008/2017 dated 31.08.2017*

3.1. He also submitted that since the credit attributable to the services on which abatement was claimed is reversed, it is as if no credit was taken on the same and the appellant cannot be denied the benefit of abatement Notification. For this he relied upon the following decisions:

a. *Khyati Tours and Travels Vs. CCE, Ahmedabad – 2011 (24) S.T.R. 456 (Tri.-Ahmd.)*
b. *Central Warehousing Corporation Vs. Commissioner of Service Tax, Raigad – 2014-TIOL-2182-CESTAT-MUM.*
c. *Commissioner of C. Ex., Jaipur-I Vs. Sanjay Engineering Industries – 2016 (43) S.T.R. 354 (Raj.)*
d. *Beekay Engineering Corporation Vs. Commissioner of C. Ex., Raipur – 2017 (52) S.T.R. 500 (Tri.-Del.)*

4. On the other hand the learned AR defended the impugned order.

5. After considering the submissions of both the parties and perusal of the material on record, we find that on an identical issue in the appellant's own case for the subsequent period, this Tribunal vide its various decisions cited supra has remanded the case back to the original authority for the purpose of verifying whether the appellants have reversed the proportionate credit and if they have reversed, extend the benefit of the decision of this Tribunal relied upon by them. It is pertinent to reproduce the finding of the Tribunal in the appellant's own case for the subsequent period which is recorded in para 7 as under:

> *"7. After considering the submissions of both the parties and perusal of the material on record, we find that the appellants have already reversed proportionate credit attributable to tour operator service and rent-a-cab scheme operator service and therefore the appellants are entitled to the benefit of abatement under Notification No. 1/2006 in respect of tour operator service and rent-a-cab scheme operator service. In*

order to verify whether the appellants have actually reversed the proportionate service tax credit or not, this case needs to be remanded back to the original authority for verification of the same. Further we find in the appellant's own case vide Final Order No. 20187/2014 dt. 06.02.2014 and Final Order No. 21057/2014 dt. 03.07.2014, identical issue arose and the Division Bench of this Tribunal remanded the matter to the original authority for the purpose of verifying whether the appellants have reversed the proportionate credit and if they have reversed, extend the benefit of the decisions of this Tribunal relied upon by them. Needless to say that the appellants shall be given a reasonable opportunity to present their case and to produce documents. In view of this, appeal is allowed by way of remand and the stay application is also disposed of."

6. By following the ratio of the above said decision, the present appeal is also allowed by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **19/07/2019**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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