CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/619/2009-DB

[Arising out of Order-in-Appeal No. 154/09 dated 21/04/2009 passed by Commissioner of Central Excise (Appeals), Mangalore

M/s Airtravel Enterprises India Ltd
Mahendra Arcade, Kudumal Ranga Rao Road,
Karangalpady, Mangalore
MANGALORE - 575003
KARNATAKA

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax Mangalore
7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE, - 575003
KARNATAKA

Respondent(s)

Appearance:

Mr. Manoj Pillai, Advocate TAXAIDE
AH-116. 7TH MAIN ROAD, ANNA NAGAR
CHENNAI - 400040
TN

For the Appellant

Mrs. C.V.Savitha, Superintendent (AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20951 / 2019

Date of Hearing: 27/09/2019

Date of Decision: 27/09/2019

Per : P. ANJANI KUMAR

The appellants, M/s. Air Travels Enterprises India Private Limited, are a travel agency and are providing services in relation to Visa

Immigration and Passport Services; they help clients to approach them for assistance in visa stamping, passport renewal, immigration work. The revenue contended that the activity under taken by the appellants fall under business Auxiliary Service under Section 65(19) of Finance Act, 1994. A show-cause notice were issued demanding Service Tax of Rs.32,711 for the period January 2005 to March 2007. Show-cause notice it was confirmed by OIO No. 30/2008 dated 29/04/2008 and was upheld by Order-in-Appeal No. 361/2008 dated 21/04/2009. Hence, the present appeal.

2. The learned counsel for the appellants submits that there is no principal-agent relationship. There is no service rendered to their clients in furtherance of their business. The activity related to visa and passport are Sovereign and therefore not taxable. He relies upon the CBEC letter F. No. 137/111/2007- dated 13/07/2007, address to DGCEI, written in some other context and submits that as clarified at Para no.4 the words" provision of service on behalf of the client" is the key word. Taxable activity envisaged under BAS is that while the client is obliged to provide some service to a third person but instead of the client providing such service, the service provider, provides such service to the third person on behalf of the client i.e., acting has an agent of the client. He submits that admittedly in this case there is no third person; therefore, the activity under taken by the appellant does not fall under 'business auxiliary service' or any other taxable service. He further submits that the appellant authority has wrongly relied upon ETA Travel Agency Pvt. Ltd., 2007 (007) STR 454; the appellant is only advising the passengers on the issue related to health, currency, immigration and other regulations in force in countries to which is clients intended to travel; by no means the said activity cannot be said to be for furtherance of business of the clients.

3. Learned AR speaking for the Department reiterates the findings of OIO and OIA.

4. Heard both sides and perused the records of the case. It is the case of the Department that the appellants are rendering business auxiliary service and their customers i.e., the passengers and are getting remuneration in the form of service charges and that the appellants are not performing any

statutory functions. Ongoing through the rival submissions, we find that the issue is in a brief compass. The appellants are undoubtedly rendering some service to their clients in advising about passport and visa procedures. We find that, the clients i.e., the passengers who approach appellant are mere travellers. There is no business involved. Therefore, it cannot be said that the appellants are rendering business auxiliary service to their various clients. The appellants are not rendering any service to a third person on behalf of their principals. In fact, there is no principal involved in the instant issue. The principal and third persons, if any, are the clients or passengers themselves. Therefore, we find that no activity which can be categorized as business auxiliary is being rendered by the appellants. Therefore, we find that the impugned order is not sustainable as the same is not legal and proper.

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

(Operative portion of the Order was pronounced
in Open Court on **27/09/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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