CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 17.02.2013

Service Tax Appeal No. 58064 of 2013

(Arising out of order in appeal No. 76/ST/D-II/13 dated 06.03.2013 passed by the Commissioner of Service Tax, Delhi).

M/s Garg Airlinks Appellants

Vs.

CST, New Delhi Respondent

Appearance:

Shri Atul Kumar Gupta, C. A. for the appellant
Dr. Neha Garg, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52051/2017

Per: Justice (Dr.) Satish Chandra :

The present appeal is directed against the order in appeal No. 76/ST/D-II/13 dated 06.03.2013 passed by the Commissioner of Service Tax, Delhi.

2. The brief facts of the case are that, the appellant are engaged in the air ticket services. The appellant booking order through M/s Galileo India by using their customised software website, if ticket is booked directly , the airlines is paying service tax under the category of "Air Travel Agent"

services if the ticket is booked through a software provided by Galileo, the appellant is paying service tax on the commission received from M/s Galileo India under the category of "Air Travel Agent" service but not paying service tax on the commission received from M/s Galileo India Pvt. Ltd. under the category of "Business Auxiliary Service".

3. After issue of show cause notice the department raised demand for service tax under "Business Auxiliary Service" for the period 2003-04 to 2007-08, alongwith interest and various penalties which was confirmed by the impugned order. Being aggrieved, the present appeal is filed by the appellant.

4. Shri Atul Kumar Gupta, ld. C.A. for the appellant submits that the appellant is regularly filing return. The activity of the appellant can be classified in three categories. He also submits that the service tax on the "Air Travel Agent" pertaining to the travelling came into existence from 01.05.2006. For this purpose, he relied upon the decision in the case of ***Acquire Services Pvt. Ltd. vs. CST, Delhi – 2014 (36) STR 1148 (Tri. Del.)***. Finally, he submits that the impugned order may kindly be set-aside.

5. On the other hand, Dr. Neha Garg submits that prior to 01.05.2006, the "Business Auxiliary Service" were available in the statute and the case of the appellant fall within the category of "Business Auxiliary Service" where the lower authority has rightly made a demand of service tax.

6. After hearing both the parties, it appears that the identical issue has come up before the Tribunal in the case of ***D. Pauls Consumer Benefit Limited vs. CCE, New Delhi in S.T. Appeal No. 901 of 2011 (Final order No. 50861/2017 dated 15.02.2017)*** where it was observed that:

> "*5. After hearing the rival submissions and on perusal of record, it appears that the assessee-appellants are travel agent and providing the tickets for air as well as railways. They also act as the 'Rail Agent's Service' which is coved under Section 65(87) of the Finance Act, 1994 and liable to pay the Service Tax. Regarding the commission/ incentive received from GDS/CRS, it may be stated that the said GDS/CRS companies are providing adequate free of cost computers with essential accessories and software to the travel agents at their premises. These computers are connected worldwide to the GDS/CRS, which linked to ticket sales offices of various airlines, hotels and car rental agencies spread across the world. They are by using thee GDS/CRS for booking tickets, receiving incentives from the said companies for every segment booked by them. Hence, the service provided by the assessee-appellants has rightly been covered under the heading "Business Auxiliary Service" as defined under Section 65(19) of the Finance Act, 1994. Thus, we are of the view that the assessee-appellants being providing 'Tour Operator's Service', the commission received by them is for 'Business Auxiliary Service' under Section 73(1) of the Finance Act, 1994. The case law cited by the learned Counsel for the assessee-appellants is not applicable i the instant case as the same was dealing with the advertising agencies. So, on the facts, the ratio laid down in the said case is not applicable to the present case.*
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> *6. Needless to mention that in the 'Central Excise, Customs & Service Tax Budget, 2016-17 (published by the legal Matrix Publications, Delhi-9, on page 258)' makes a reference to High Level Committee and states that certain issues were clarified and there in paragraph 15.1.2, it was mentioned that:*
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> > *"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"*.

7. By following the ratio laid-down by the Tribunal (supra), we find no reason to interfere with the impugned order, the same is hereby sustained.

8. In the result, appeal filed by the appellant is dismissed.

(V. Padmanabhan) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant