**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. III**

**DATE OF HEARING : 24/01/2017.**
**DATE OF DECISION : 10/03/2017.**

**Service Tax Appeal No. 352 of 2011**

[Arising out of the Order-in-Appeal No. IND/406 & 407/2010 dated 30/11/2010 passed by The Commissioner (Appeals), Customs and Central Excise, Indore.]

M/s Jose Travels — Appellant

Versus

CCE, Indore — Respondent

**Appearance**

Shri Arvind Singh Chawla, C.A. – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 52299/2017 Dated : 10/03/2017

**Per. B. Ravichandran :-**

The appeal is against order dated 30/11/2010 of Commissioner (Appeals-I), Indore. The appellants are engaged in the business of air travel agency and are providing various related services to the clients. They were registered with the Department to discharge service tax under the category of "Air

Travel Agents" in terms of Section 65 (105) (zz) of Finance Act, 1994. The dispute in the present appeal relates to certain short payments of service tax by the appellant during the period 2003-2004 to 2006-2007. After conducting audit of the records of the appellant, the Revenue entertained a view that the appellants have not discharged service tax on various receipts/income as shown in their profit and loss account during these years. The Revenue proceeded against the appellant to demand and recover service tax under the categories of "Rent a Cab Operator Service", "Rail Travel Agents Service" and "Business Auxiliary Service". The service tax under the category of Business Auxiliary Service (BAS) was sought to be demanded for appellant's income under commission on credit card, commission on foreign exchange, income from domestic and international ticket, passport/visa service and income from Computer Reservation System (CRS).

2. The Original Authority adjudicated the case on 30/03/2010. He confirmed a service tax demand of Rs. 12,94,443/- alongwith penalties under Section 77 and 78 of Finance Act, 1994. The Commissioner (Appeals) upheld the original order and also imposed additional penalty under Section 76 of the Act while disposing of the appeal by Revenue on the said original order.

3. The learned Counsel appearing for the appellant submitted that they are registered with the Department for payment of service tax as Air Travel Agents. They were discharging service

tax on the said service in terms of Rule 6 (7) of Service Tax Rules, 1994. They have correctly discharged the service tax. The learned Counsel referred to the finding in the impugned order which stated that when the appellants discharged service tax liability by opting to the provisions under Rule 6 (7), then they are not required to pay service tax as confirmed in the original order. The learned Counsel further submitted that even after such finding, the original order was upheld only on the ground that the details of basic fare were not provided by the appellant. The learned Counsel submitted that this is incorrect. They have all the details regarding base fare and the income from domestic/international ticket sales. In this connection, the learned Counsel submitted that neither the original order nor the first appellate order, examined the documents submitted by the appellant in detail. In fact, the original order was passed ex-parte with an observation that the appellants failed to file any reply or attend the personal hearing. The findings by the Original Authority were made in a presumptive and summary manner. The confirmation by the First Appellate Authority is also without detailed discussion of the various legal provisions as well as the data submitted by the appellant. In fact, for confirming service tax under Business Auxiliary Service, the impugned order did not bring out exactly under what category and to which client they were providing Business Auxiliary Service. It is the case of the appellant they are actually using the CRS for their business benefit and the passengers are not even aware as to what type of computer system or software they are using. In such situation, it is not proper to allege that they are promoting the said CRS to the ticket booking passengers. The usage of CRS by the appellant has benefited their business and also incidentally helped in expanding the business scope of the CRS provider.

4. The learned Counsel submitted that the appellants have deposited service tax on income received under various categories like car rental, hotel reservation, rail reservation, passport/visa services and foreign exchange commission. The impugned order did not give any reason for upholding the service tax liability on these incomes. It simply states that since the tax has been deposited under protest and no detailed reasons were given for protest, it is recorded that the appellants agreed on their liability to service tax.

5. The learned AR reiterated the findings of the lower Authorities.

6. We have heard both the sides and perused the appeal records. On perusal of the appeal papers it is clear that the Original Authority passed ex-parte order though he recorded that adequate opportunities have been provided to the appellant. The impugned order also did not examine the issues raised by the appellant for a proper finding. We have noted the submissions by the learned Counsel for the appellant, as recorded above. We are in agreement with the learned Counsel, that the impugned order as well as original order suffers from serious infirmity on factual

and legal issues. We note that when the appellants have discharged service tax as a travel agents in terms of provisions of Rule 6 (7) of Service Tax Rules, 1994 and submitted supporting documents of income received on sale of tickets, the same is required to be scrutinized for correctness. Additional service tax demand cannot be confirmed only on the ground of certain categories of income are indicated in the profit and loss account of the appellant. Similarly, on the tax liability on the commission income for use of CRS, the learned Commissioner (Appeals) did not arrive at a clear finding as to what kind of promotion or marketing of such CRS and to which client, is being made by the appellant. In a BAS three party arrangement of transaction is a requirement. Considering the un-tenability of summary findings as recorded in the impugned order, we find that the same is liable to be set aside. The matter is remanded back to the Original Authority for a decision afresh. The appellant shall be given adequate opportunity to represent their case with supporting evidence. The appeal is allowed by way of remand.

(Order pronounced in open court on 10/03/2017.)

**(S.K. Mohanty)**
**Member (Judicial)**

**(B. Ravichandran)**
**Member (Technical)**

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