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 : 10/04/2017.
DATE OF DECISION : 10/04/2017.

Service Tax Appeal No. 74 of 2011

[Arising out of the Order-in-Appeal No. 374/ST/DLH/2010 dated 15/10/2010 passed by The Commissioner of Central Excise (Appeals), Delhi – I, New Delhi.]

M/s Janta Travels Pvt. Ltd. Appellant

Versus

CCE, Delhi – I Respondent

Appearance

Shri A.K. Batra, C.A. – for the appellant.

Shri Ranjan Khanna, 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. 54461/2017 Dated : 10/04/2017

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 15/10/2010 passed by the Commissioner (Appeals), Service Tax, New Delhi.

2. Brief facts of the case are that the appellant is registered with Service Tax department for providing the taxable service

namely, Air Travel Agents Services. During the course of investigation, the department observed that the appellant was using Computerized Reservation System (CRS) of two companies i.e. M/s Galileo India Pvt. Ltd. (GIPL) and M/s Abacus Distribution Systems (India) Pvt. Ltd. (ABSCRS) for booking the air tickets for undertaking such activities. Both the above companies provided incentives to the appellant for increase in usage of their CRS. The department entertained the belief that the incentive received by the appellant from M/s GIPL and M/s Abacus are in relation to furtherance of business of those companies and the services provided by the appellant should be classifiable under the category of Business Auxiliary Services. Accordingly, after issuance of show cause notice, the matter was adjudicated against the appellant vide order dated 17/11/2009, wherein service tax demand of Rs. 14,47,369/- alongwith interest was confirmed against the appellant. Besides penalties were imposed under Section 77 and 78 of the Finance Act, 1994. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 15/10/2010 has uphold the adjudged demand. Hence, the present appeal is before the Tribunal.

3. Shri A.K. Batra, learned Consultant appearing for the appellant fairly concedes that the issue involved in the present case has been decided by this Tribunal in the case of **D. Pauls Consumer Benefit Limited vs. CCE, New Delhi – 2017 – VIL – 165 – CESTAT – DEL. – ST** against the appellant. However, he submits that there were divergent views by the judicial forums

with regard to levy of service tax on the incentives received from various companies for providing CRS services. In this context, he relies on the judgment of Hon'ble Madras High Court in the case of **Travel Masters India (P.) Ltd. vs. CST, Chennai** reported in **2015 (40) S.T.R. 33 (Mad.)** and the decision of the Commissioner (Appeals) in the case of **International Travel House Pvt. Ltd. vs. Commr. (Appeals)** reported in **2014 (33) S.T.R. 606 (Commr. Appl.)** and **Starline Travels Ltd. vs. Commr. (Appl.)** reported in **2002 (27) S.T.R. 526 (Commr. Appl)**. Thus, the learned Consultant submits that since the issue was not free from doubt regarding levy of service tax on CRS services, the charges of suppression of facts cannot be levied against the appellant and accordingly, the extended period of limitation cannot be invoke for confirmation of the service tax demand. In this context, the learned Consultant has relied on the following decisions render by the judicial forums:-

(a) **South Eastern Coalfields Ltd. vs. CCE, Raipur** reported in **2017 (47) S.T.R. 93 (Tri. – Del.)** ;

(b) **Bharti Airtel Ltd. vs. CCE, Panchkula** reported in **2016 (43) S.T.R. 400 (Tri. – Del.)** ;

(c) **Phoenix International Freight Services Pvt. Ltd. vs. CST, Mumbai – II** reported in **2017 (47) S.T.R. 129 (Tri. – Mumbai)** ;

(d) **South Eastern Coalfields Ltd. vs. CCE, Raipur** reported in **2017 (47) S.T.R. 143 (Tri. – Del.)** ;

(e) **Bird Travels (P) Ltd. vs. CCE, Delhi – I** reported in **2016 (45) S.T.R. 143 (Tri. – Del.)** ;

(f) **Ved Automotives vs. CCE, Kanpur** reported in **2016 (44) S.T.R. 140 (Tri. – All.)** ; and

(g) **Ankleshwar Taluka ONGC Land Loosers Travelles Co. Op. vs. CCE, Surat – II** reported in **2013 (29) S.T.R. 352 (Guj.)**.

4. On the other hand, Shri Ranjan Khanna, the learned AR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that since the identical issue has already been decided by the Tribunal in the case of **D. Pauls** (supra), the authorities below are justified in confirming the service tax demand against the present appellant.

5. Heard both the sides and examined the case records.

6. We find that the issue regarding classification of CRS service under the category of Business Auxiliary Service has already been decided in the case of **D. Pauls** (supra). Thus, the appellant is liable to pay service tax for the services provided to M/s GIPL and Abacus under the taxable category of Business Auxiliary Services. However, we find that the Commissioner (Appeals) in an identical set of facts, in the cases of **International Travel House Pvt. Ltd.** (supra) and **Starline Travels Ltd.** (supra), has set aside the adjudication order and allowed the appeal in favour of the appellants. Thus, the issue regarding levy of service tax on CRS was not free from doubt and

accordingly, suppression of facts with intent to evade payment of service tax cannot be levied against the appellant. Therefore, the extended period of limitation invoked in this case cannot be sustained. The demand of service tax liability should be confined to the normal period. Since, there is no suppression of facts, penalty imposed under Section 78 on the appellant cannot be sustained.

7. In view of above, the impugned order is set aside and the appeal is allowed to the extent of confirmation of service tax demand under the extended period of limitation. Imposition of penalty also set aside. The appeal is disposed of in the above term.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK