CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88078 of 2018

(Arising out of Order-in-Original No. 87/COMMR/(Dr. KNR)/CGST&CEX/MC/2017-18 dated 21.03.2018 passed by the Commissioner of CGST & Central Excise, Mumbai Central, Mumbai.)

Cleartrip Private Limited **... Appellants**
Unit-1, DTC Building,
Sitaram Mills Compound,
N.M. Joshi Road, Lower Parel (East),
Mumbai - 400 013.

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai Central
GST Bhawan,
115, Maharshi Karve Road,
Opp. Church gate Station
Mumbai – 400 020.

With

Service Tax Appeal No. 86799 of 2019

(Arising out of Order-in-Original No. 168/PR.COMMR/(DR. KNR)/CGST&CEX/MC/2018-19 dated 11.03.2019 passed by the Commissioner of CGST & Central Excise, Mumbai Central, Mumbai.)

Cleartrip Private Limited **... Appellants**
Unit-1, DTC Building,
Sitaram Mills Compound,
N.M. Joshi Road, Lower Parel (East),
Mumbai - 400 013.

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai Central
GST Bhawan,
115, Maharshi Karve Road,
Opp. Church gate Station
Mumbai – 400 020.

Appearance:

Shri Gopal Mundra along with Ms. Swati Agarwal, Advocates for the Appellants

Shri Shambhoo Nath, Special Counsel for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86853-86854/2025

Date of Hearing: 20.06.2025
Date of Decision: 20.06.2025

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Cleartrip Private Limited, Mumbai (herein after referred to as 'appellants', for short) assailing the Order-in-Original No. 87/COMMR/(Dr. KNR)/CGST&CEX/MC/2017-18 dated 21.03.2018 and Order-in-Original No. 168/PR.COMMR/(DR. KNR)/CGST&CEX/MC/2018-19 dated 11.03.2019 (referred together as 'impugned orders') passed by the Commissioner/Principal Commissioner of CGST & Central Excise, Mumbai Central, Mumbai.

2.1. Briefly stated, the facts of the case are that the appellants herein *inter alia*, are engaged in the business of online air travel ticket booking through their website "cleartrip.com" in providing the taxable services of 'air travel agent services', for various domestic and international airlines. Besides this, the appellants also provide other travel related services such as 'tour operator service' and 'rail travel agent service'. For the purpose of payment of service tax and for compliance with the Service Tax Statute, the appellants are centrally registered with the Department and are holding Service Tax Registration No. AACCC6016BST001. On the introduction of GST regime, the appellants are holding GST Registration Certificate No. 27AACCC6016B1Z8.

2.2 Directorate General of Central Excise Intelligence (DGCEI), Mumbai Zonal Unit had collected intelligence that the appellants in providing the air travel agent services are charging on their own account, 'convenience fee' for issuing air tickets, 'cancellation fees' or 'Refund Administrative Fee (RAF)' for cancelling air tickets and processing refund arising thereof and 'reissue, amendment or rescheduling fees' for the issue, amendment of air tickets from the passengers/customers. However, the appellants were found to be not paying service tax on all of those charges. Therefore, detailed enquiry was conducted by the DGCEI, including visit of office premises, verification of records called for under summons, recording of statements from the persons concerned. On conclusion of the investigation, the department had issued Show Cause Notice (SCN) dated 21.10.2015 proposing the demand of service tax under the taxable category of 'Business Auxiliary Services' (BAS) defined under

Section 65(105)(zzb) of the Finance Act, 1994 (up to 30.06.2012) and thereafter as 'taxable service' defined under Section 65(44) ibid for Rs.19,18,55,497/- and for imposition of penalty, covering the extended period from the Financial Year 2010-2011 to FY 2014-2015; and one another Show Cause cum Demand Notice dated 19.04.2018 for the subsequent FY 2015-2016 demanding service tax of Rs. 12,38,60,078/-, were issued to the appellants and proposed for imposition of penalties on the appellants. In adjudication of the above SCNs, the Commissioner of Service Tax vide impugned order dated 21.03.2018, had confirmed all the proposals made in the SCN dated 21.10.2015 including imposition of penalties under Section 77, 78 of the Act of 1994; further, in respect of SC cum Demand Notice dated 19.04.2018, accepting the submission of the appellants that amount charged should be considered as inclusive of service tax, he had reduced the amount of service tax demand to Rs.10,86,53,303/- by dropping demand of Rs.1,52,06,775/- and imposed penalties of Rs.50,00,000/- and Rs.5000/- under Section 76 and 77 ibid respectively. Feeling aggrieved with the impugned orders, the appellants have filed these appeals before the Tribunal.

3.1 Learned Advocate for the appellants submitted that the appellants while providing the service of online air travel booking to their customers had received certain amount as commission, at the pre-agreed rates on the basis of 'basic fare' charged by the airlines. Besides this, the appellants also receive convenience fees, amendment fees, markup etc. The 'convenience fee' is charged by the appellants to their customer for facilitating the transaction of booking of air tickets on their online portal. In cases where the customer requests for amendment or modification in the air tickets which are already booked, such as changing the name, flight timing, destination etc., they charge 'amendment fee'. While selling the air tickets to the customer, the appellants charge the price anywhere between the pre-agreed airfares fixed by the airlines i.e., the lower and the upper limit of airfare. If such price recovered from the customer is above the lower limit of the ticket airfare, the airlines allow the appellants to retain the difference as 'markup'. Such markup is treated as a part of consideration for services provided to airline for booking of tickets. He further stated that in terms of service tax statute, for due discharge of service tax liability on air travel agent service, the tax is collected in two modes/option; one is a 'commission model', where service tax at full rate as specified in Section 66B of the Act of 1994 is levied on the gross value of taxable services provided by the air travel agents; the taxable value of the service in this model excludes the airfare of the ticket, but includes any commission received from the airlines. Therefore, service tax at full rate is payable on the commission received by the appellants-air travel agents from the airlines. In the second model, service tax at the rate of 0.7% of the basic airfare, in case of domestic tickets and 1.4% of the basic airfare, in case of international tickets, is required to be paid for discharge of service tax liability, instead of paying tax at full rate on the commission charges in terms of Rule 6 (7) of the Service Tax Rules, 1994.

3.2 Learned Advocate further submitted that during the disputed period, the appellants have adopted the basic airfare commission model and discharged service tax at the composite rate of 0.7%/1.4% of airfare. Accordingly, he submitted that any amount of the value of taxable services in excess of the commission received under air travel agent service were exempt from payment of service tax in terms of Notification No. 22/97-S.T. dated 26.06.1997. He further submitted that since convenience fees, amendment fees and markup fees etc., are being part of the consideration received from the airlines for air travel agent service, no further service tax was separately required to be discharged by the appellants on such amounts.

3.3 Learned Advocate further submitted that the issue of payment of service tax on processing fee, convenience fees, markup, amendment fees etc. is no more *res integra* as the said issue has been decided in a number of cases by the Tribunal and the said decision has also been upheld by the Hon'ble Supreme Court. Details of such cases in support of their stand as given by him, are as follows:

(i) *Trinity Air Travel & Tours Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai East* - (2025) 32 Centax 245 (Tri.-Bom) and upheld by Hon'ble Supreme Court in dismissing *Civil Appeal Diary No. 11172 of 2025* - (2025) 32 Centax 246 (S.C.)

(ii) *Akbar Travels of India Pvt. Ltd.* v. *Commissioner of Service Tax, Mumbai* – 2019 (22) G.S.T.L. 427 (Tri. – Mumbai)

(iii) *Kafila Hospitality & Travels Pvt. Ltd.* v. *Commissioner of Service Tax, Delhi* – 2021 (47) G.S.T.L. 140 (Tri.-LB)

4. Learned Special Counsel submitted that the amount of consideration received by the appellants for providing the services for processing online purchase of air tickets as convenience charges, markup etc. are over and above the basic airfare and thus, these should be considered as independent and separate from the basic airfare for which they are liable to pay service

tax. He further reiterated the conclusions arrived at in the impugned order in confirmation of the adjudged demands by the original authority.

5. Heard both sides and perused the records of the case. We have also considered the paper book containing submissions made in writing by the learned Advocate appearing for the appellants and the learned Special Counsel of the Department.

6. We find that the dispute in this case lies in the narrow compass of deciding whether service tax is liable to be paid or not, in respect of the processing fees/convenient fees, markup/service fees, amendment fees etc. received by the appellants from their customers in providing the air travel ticket online booking service, as "Business Auxiliary Service'/'Service', under the Finance Act, 1994 and the Rules made there under; and whether the the appellants would be liable to penalty under Section 76, 77, 78 *ibid* during the disputed period.

7. In this regard, we find that the issues under dispute have been examined by this Bench of the Tribunal in an identical set of facts in the case of *Trinity Air Travel & Tours Pvt. Ltd.* (supra) and the demand of service tax was set aside. The relevant paragraphs of the said order is extracted and given below:

> *"1…..On the basis of intelligence, investigation was carried out by the officers of the Directorate General of Central Excise Intelligent (DGCEI), Mumbai Zonal Unit against the appellants and relevant records were taken over from them and also statements of concerned persons were recorded. Consequent to the investigation, two show cause notices dated 22.04.2016 and 27.11.2018 were issued by the department to the appellants, alleging therein that they had provided services and earned commission/ incentive from Global Distribution System (GDS) companies for visa and passport processing charges along with management fees, emigration charges, service charges, ORC (Over-Riding Commission) for booking of air tickets, cancellation charges for cancellation of air tickets provided by them were classifiable as 'Business Auxiliary Service' (BAS) as per provisions of Section 65(19) ibid read with Section 65(105)(zzb) of the Finance Act, 1994 and these were taxable services as per provisions of Section 65B(44) ibid read with Section 65(51) ibid, but the appellant did not pay the service tax due thereon. It was also noticed by the revenue that the appellants had procured air tickets from the airlines/ consolidators and sold those to their customers at higher rate, on which they did not pay service tax under the category of air travel agent's service. It was also alleged that they had collected an amount of Rs. 5,11,69,227/- from their customers as being service tax, but had not deposited the same to the credit of the government.*
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> *xxx xxx xxx xxx*

6. *We find that the Air Travel Agents are using the portals of the same CRS service providers for booking of air tickets. The CRS is computerized system used to store and retrieve information and conduct transaction related to Air Travel. Major CRS operators that book and sell tickets for multiple Airlines are known as Global Distribution Systems (GDS). On perusal of the statutory provisions vis-à-vis the activities undertaken by the appellants, we find that the appellants is not an agent, working on behalf of the customers for facilitating purchase of tickets from the CRS. The customers approaching the appellants for booking of tickets are not aware about the particular CRS, who issues the ticket through the appellants. In order to fall under the purview of BAS, there must be involvement of three parties namely, the service provider, service receiver and the agent facilitating procurement of service for and on behalf of the service provider. In other words, all the three parties involved in the contract must be known to each other, in order to be classifiable under such head of service. It is an admitted fact on record that for booking of ticket, the passenger only approached the appellants and not the CRS. Verifying the economic aspect, the subagent, like the appellants approaches a particular CRS for booking of tickets. Thus, in absence of any connection between the CRS, the appellants and its customers, the activities cannot be considered as a service, exigible to service tax under the taxable category of BAS. Further, there is no difference between the nature of services provided by the CRS and the appellants inasmuch as both of them are confined to cater to the requirement of booking of tickets, for the benefit of both the airlines and the customers. It is seen that the CRS commission /incentive is paid to the appellants, if they are able to attain an agreed level of segments to be booked. A passenger is not aware of the CRS Company being utilized by the travel agent for booking the segment nor can a passenger influence appellants /travel agent to avail the services of a particular CRS Company. The passenger cannot directly use the CRS software provided by the Company to book an airline ticket. It cannot, therefore, be said that the appellants are promoting any activity for the passenger or they are providing services on behalf of CRS.*

7. *Further, it would be seen from the definition of "air travel agent" that it includes all services connected with, or in relation to the booking of passage for travel by air. The services in question are booking of airlines tickets and for achieving a pre-determined target. The air travel agent also receives an additional amount in the form of incentives/ commission from the airlines or the CRS Companies. The receipt of incentives/commission would not change the nature of the services rendered by the travel agent. Whether the ticket is bought directly from the airline or through the CRS, the same would not make any difference. Thus, in our view, the commission, incentives, cancellation charges etc., received by the appellants cannot be subjected to levy of service tax under BAS. Moreover, it is on record that during the disputed period, the appellants were paying service tax under Rule 6(7) ibid and since, payment of service tax under air travel service was accepted by the department, contrary stand cannot be taken to fasten the tax liability on the appellants under a different category of service namely, BAS.*

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9. *Now we are addressing the second issue that arises for consideration is, whether the appellants are liable to pay service tax on collection of certain* *amounts from the clients for Visa/Passport Processing charges with management fees, emigration charges collection etc. In this context, we find that the CBEC vide Circular No. 137/6/2011–ST dated 20.04.2011, has clarified that the assistance provided by visa facilitation directly for processing of visa application, does not fall under any of the taxable services under Section 65(105) ibid. Hence, levy of Service tax on that count is not attracted. The learned adjudicating authority has also considered the said Circular in the impugned order, but has held that activity of providing assistance is a 'service'; but such service was neither covered under negative list, services as per Section 66D ibid, nor exempted under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. On such interpretation, he has opined that Service tax is required to be paid on such services after 01.07.2012. Accordingly, learned adjudicating authority found that demand for the period 01.04.2010 to 30.06.2012 is not maintainable, but confirmed the demand for the period 01.07.2012 to 30.09.2015 and from October 2015 to Mach 2016. We find that learned adjudicating authority in the present case, has wrongly conceived the CBEC circular dated 20.04.2011, inasmuch as all the taxable services are defined in sub-clauses of clause 105 of the Section 65 ibid at that relevant point of time. This statutory provision is still existing even from 01.07.2012 onwards. The CBEC Circular clarifies that the assistance for processing of visa application does not fall within the scope of services defined under Section 65(105) (k) ibid, 65(105) (zzb) ibid and Section (105) (zzzq) ibid. In both the SCNs, the demand on this count was raised covering the service under BAS. However, it is not classifiable as per CBEC clarification under this category. We also notice that learned adjudicating authority has not categorized this service under any definition of service provided in clause (105) of Section 65 ibid for the confirmation of demand. Further, the impugned order does not mention as to under which clause of the definition of BAS under Section 65(19) ibid, this activity of the appellants would be covered. When the learned adjudicating authority could not determine the nature of taxable service provided by the appellants in this case, it is absolutely improper on the part of the department to confirm the service tax demand on such ground. It is well settled position of law that lack of clarity in the show cause notice/order and omission to indicate the specific category of service, under which the tax is proposed to be demanded will vitiate the proceedings ab initio. In such circumstances, the demand of service tax cannot survive.*

10. *As regard the demand of Service tax on amount collected/retained/received by the Appellants as ORC (Over Riding Commission)/ RAF (Retaining Refund Administrative Fees), we find that the learned adjudicating authority has dropped the demand on ORC/RAF upto the period 30.06.2012, following the decision of the Tribunal in case of Globe Farex & Travels Ltd. (supra). However, he did not apply the same principle on the demand proposed for recovery for the period 01.07.2012 to March 2016, owing to the reason that the 'ORC/RAF' is not covered in exemption Notification No. 25/2012-ST dated 20.06.2012 or in the negative list of services prescribed in 66D ibid (came into effect from 01.07.2012). In this context, we notice that the appellants were charging 'ORC' in lieu of their overheads or cost of booking tickets, from their clients. They are also charging & recovering/ retaining Refund Administrate Fees (RAF) from their clients against cancellation of Air Tickets. Appellants render the services of Air Travel Agent by booking of passage for travel by* *air for the clients/ customers. If the Airlines do not provide any commission to them, they recover the cancellation charges/booking overhead charges/ cost of booking tickets in the name of ORC/RAF from their customers. On the said ORC/RAF amount, the impugned SCNs had proposed for demand of service tax under the head BAS. However, we find that neither the SCNs nor the impugned order have specified under which clause of the definition of BAS the said activity of appellants would be covered. Appellants render the services of Air Travel Agent by booking of passage for travel by air for the clients/ customers and not provided any Business Auxiliary Service to them. We also find that this activity is not covered by any of the specific clauses of the definition of BAS as provided in Section 65(19) ibid. These charges are collected from the persons booking the air ticket and this is not the amount received from the appellant's clients i.e., the airlines/CRS. It is not disputed that in respect of cancelled tickets, the airlines/CRS do not give any commission whatsoever to the appellants. In view of this, we are of the considered opinion that no service tax would be payable under Section 65(105)(l) ibid on the said charges, which are a part of the airfare received by the appellants from the persons booking the air ticket(s); who, subsequently, had cancelled the same. Therefore, we hold that this activity is not taxable under BAS during the period of dispute and thus, the said disputed charges which are recovered/ retained by the appellants are not liable to Service tax under BAS.*

12. *Another issue that arises for consideration is whether, in respect of the Air Ticket purchased by the appellants from Airline consolidators and sold to customers at higher price, the appellants are liable to pay service tax. We find that the appellants are purchasing ticket from Consolidator/General Sale Agents/other agents on discounted price and thereafter, they are selling at a higher price to the customers. The trade margin earned for such purpose is not taxable as held by the Tribunal in the case of Commissioner of Service tax, Ahmedabad v. Om Air Travels Pvt. Ltd (supra) as under :*

13. *We also find that where air tickets were procured by appellants from the consolidators, service tax was paid by the consolidators. In these cases, the consolidators had opted under Rule 6(7) ibid and paid the Service tax at the specified percentage of basic fare. As such, there cannot be levy of Service tax under Rule 6(7) ibid again for the same Air ticket dealt with by the appellants. However, from the documentary evidences provided by the appellants, we find that wherever tickets were purchased from consolidators, they had started paying Service tax on the basic fare from 01.04.2014. In these circumstances, the service tax demand confirmed against ticket booked through consolidators, is legally not correct and we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants.*

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18. *In view of the foregoing discussions and analysis, we do not find any merits in the impugned order, in so far as it has confirmed the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants, with consequential relief, if any, as per law.”*

8.1 We further find that in the case of *Kafila Hospitality and Travels Ltd.* (supra), the Larger Bench of the Tribunal had examined the identical issues under dispute, in a greater detail and have answered all the questions raised on the doubt whether such services would qualify for taxable services or not, in the context of the liability for payment of service tax. The relevant paragraphs of the said decision of the Larger Bench of the Tribunal is extracted and given below:

"10. *At the time of hearing of the appeal before the Division Bench, the Learned Authorized Representative of the Department placed the decision rendered by a Division Bench of the Tribunal in D. Pauls. However, the Division Bench hearing this appeal expressed doubts on the proposition of law laid down in the earlier Division Bench decision of the Tribunal in D. Pauls and framed the following six issues to be decided by the Larger Bench :-*

"(i) Whether the Incentive received by service receiver from service provider, on appreciable performance, can be subjected to service tax?
(ii) Whether a demand can be confirmed without specifying the sub clause of BAS under which the activities are covered?
(iii) Whether demand of service tax can be confirmed under the taxable category of BAS in absence of three parties - service provider, service receiver and targeted audience?
(iv) Whether in cases where value of service is fixed under an option provided under the Rules, such option having been exercised and not withdrawn, is it open for the authorities to demand service tax on other consideration or incentive received, be taxed under another category?
(v) Can service tax liability be fastened without specifying the consideration for service as provided under section 67 of the Chapter V of Finance Act, 1994 as amended up to date?
(vi) Can service tax liability be fastened in absence of the relationship of service provider and service receiver?"

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80. *It, therefore, clearly transpires from the aforesaid decisions that incentives paid for achieving targets cannot termed as "consideration" and, therefore, are not leviable to service tax under Section 67 of the Finance Act.*

81. *The reference to this Larger Bench has arisen for the reason that the Division Bench hearing this appeal expressed doubts about the view taken by the Division Bench in D. Pauls. The appellant therein was a travel agent who had used the CRS system of Galileo, Amadeus and Abacus which had paid incentives to the appellant for the period from October 1, 2003 to December 21, 2008. The lower authorities had observed that the services provided by the appellant fell under the category of "tour operator" services as defined under Section 65(11)(o) of the Finance Act. In the appeal before the Tribunal, the Learned Authorized Representative of the Department had submitted that the services were covered under "BAS". The Division Bench hearing the appeal observed that the services provided by the appellant were rightly covered under that heading of "BAS" as defined in Section 65(19) of the Finance Act. The relevant portion of the decision is reproduced below :-*

"2. The brief facts of the case are that, the assessee-appellants are registered under the category of "Air Travel Agent's Services" and they have been issuing air tickets of various airlines and paying Service Tax on the amount of basic fare. For the purpose, the assessee-appellants used Computer Reservation System (CRS) of M/s. Galileo India, Amadeus India and Calleo Distribution to encourage their business, for which they have been paying the incentives against the segment booked by the assessee-appellants during the disputed period from 1st October, 2003 to 31st December, 2008. The lower authorities has observed that the services provided by the assessee-appellants fall under the category of "Tour Operator's Services" as defined under Section 65(11)(o) of the Act. Being aggrieved, the assessee-appellants have filed the present appeal.

3. xxxxxxxxxx

4. xxxxxxxxxx

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 Travel Agent's Service" which is covered 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 these 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 in 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 is not applicable to the present case."

(emphasis supplied)

***82.** A perusal of the aforesaid decision would indicate that though in paragraph 2 of the decision, the Division Bench noted that the lower authorities had categorized the services rendered by the appellant as "tour operator", but in paragraph 5 of the decision the Division Bench observed that the services provided by the appellant were rightly covered under "BAS". In fact, the Division Bench also observed that since the appellant was providing "tour operator" services, the commission received by them is for "BAS" under Section 73(1) of the Finance Act. There is no discussion in the decision as to why the commission received would fall under "BAS". The decision also does not specify the particular sub-clause of Section 65(19) of the Finance Act that defines ""BAS". It also needs to be noted that on behalf of the appellant it was contented that no marketing or promotion was conducted by the appellant since it is the choice of the appellant to choose a particular CRS Company and that the customer also does not even know under which CRS system the ticket was booked, but there is no discussion on this aspect nor is there any discussion on the submission of the appellant that the amount received from the CRS Companies cannot be treated as deemed commission since it was merely an incentive and did not attract service tax.*

> ***83.*** *These contentions as to whether the air travel agent is promoting the business of the airlines or the CRS Companies have been dealt with in the earlier portion of this order. The order also discusses whether the classification of service would fall under "air travel agents" services or under "BAS" and whether incentives paid for achieving the targets are taxable.*
>
> ***84.*** *The inevitable conclusion, therefore, that follows from the above discussion is as follows :-*
>
> *(i) the air travel agent is promoting its own business and is not promoting the business of the airlines;*
>
> *(ii) the air travel agent is not promoting the business of the CRS Companies;*
>
> *(iii) in any view of the matter, the classification of the service would fall under "air travel agent" service and not "BAS" in terms of the provisions of Section 65A of the Finance Act; and*
>
> *(iv) the incentives paid for achieving the targets are not leviable to service tax.*
>
> ***86.*** *In the light of the aforesaid discussion and findings, the answers to the six issues that have been referred to the Larger Bench are as follows :-*
> ***First issue :*** *The incentives received by a service recipient from a service provider cannot be subjected to levy of service tax.*
>
> ***Second issue :*** *This issue does not arise for consideration in this appeal as the show cause notice and the adjudicating order had confirmed the demand under Section 65(19)(ii) of the Finance Act;*
>
> ***Third issue :*** *A passenger cannot be deemed to be an audience for the promotion of the business of CRS Companies; and*
>
> ***Fourth, Fifth and Sixth issues :*** *In view of the discussion and findings these issues do not arise for consideration and are, therefore, not being answered."*

8.2 It is an undisputed fact on record that the appellants had paid applicable service tax on 'air travel agent service' at the prescribed rate of service tax, on the entire amount of commission received from airlines in respect of air ticket charges paid by the customers/clients of appellants. Further, on plain reading of the provisions of Rule 6(7) of the Service Tax Rules, 1994 and the exemption Notification No. 22/97-S.T. dated 26.06.1997, it clearly transpires that in providing the taxable service of 'air travel agent', once the appellants-air travel agent discharges the service tax at full rate of service tax as specified in Section 66B of the Act of 1994, then the other/balance portion of the value of the taxable services are fully exempt from payment of service tax. Therefore, we find that the claim of the department that any charges received from such services involved in the same transaction is liable to service tax does not stand the legal scrutiny, and it cannot be taxed again as 'Business Auxiliary Service" in terms of Section 65 (105) (zzb) of Finance Act, 1994.

8.3 We further find that the department had filed an appeal against aforesaid order of the Tribunal in the case of Trinity Air Travel & Tours Limited (supra) vide Civil Appeal Diary No.11172/2025. In the judgement delivered on 28.03.2025, the Hon'ble Supreme Court had dismissed the said appeal filed by the department, both on the grounds of delay as well as on merits, by upholding the order of the Tribunal. The copy of the said judgement of the Hon'ble Supreme Court is extracted and given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Diary No.11172/2025

COMMISSIONER OF CGST AND CENTRAL EXCISE, MUMBAI EAST Appellant(s)

VERSUS

TRINITY AIR TRAVEL AND TOURS PVT. LTD. Respondent(s)

O R D E R

1. There is a gross delay of 187 days in filing the Appeal which has not been satisfactorily explained by the appellant.

2. Even otherwise, we see no good reason to interfere with the impugned order passed by the Custom Excise Service Tax Apellate Tribunal, West Zonal Bench at Mumbai.

3. The Appeal is, accordingly, dismissed on the ground of delay as well as merits.

4. Pending applications, if any, shall also stand disposed of.

..J
(J.B. PARDIWALA)

..J
(R. MAHADEVAN)

NEW DELHI
28TH MARCH, 2025.

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9. In view of the above discussions, we are of the considered view, that both on the facts of the case and on the interpretation of legal provisions of the Finance Act, 1994 as above and as determined by the Larger Bench of the Tribunal in Interim Order No.4/2021 dated 18.03.2021 in the case of *Kafila Hospitality and Travels Ltd.* (supra), and considering that the Tribunal's order in Trinity Air travel & Tours Pvt. Ltd. having been upheld by the Hon'ble Supreme Court as above, the demand of service tax on disputed services under clause (zzb) of sub-section (105) of Section 65 *ibid* read with Section 65(44) *ibid* is not legally sustainable.

10. In the result, the appeals filed by the appellants are allowed, by setting aside the impugned orders dated 21.03.2018 and 11.03.2019.

(Operative portion of the order pronounced in the open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha