

(2008) 08 P&H CK 0112
In the Punjab And Haryana At Chandigarh

Commissioner of C. Ex. and S.T.	Vs	APPELLANT
Janta Travels (P) Ltd.		RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Service Tax Rules, 1994 — Rule 6(3)

Citation : (2009) 13 STR 488

Hon'ble Judges : Rajesh Bindal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The Revenue is in appeal before this Court against order dated 20-8-2007 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, the Tribunal) in Final Order No. 401-402/07, raising following substantial question of law:

Whether the Tribunal's order is contrary to the provisions of Rule 6(3) of the Service Tax Rules, 1994 which requires the assessee to fulfil the following conditions for adjustment of the excess service tax so paid:

(i) Service Tax paid has been credited to the Central Government. (ii) Services are not provided to the client by the assessee; and

(iii) The value of taxable service along with service tax has been refunded to the person from whom it was collected.

2. Briefly, the facts are that the respondent-assessee was carrying on the business of air travel agent. The service provided by such agent was made amenable to levy of service tax vide notification dated 26-7-1997 w.e.f. 1-7-1997 and an option was given to the agents to pay service tax at the rate of 0.25% of the basic fare (up to 13-5-2003) and at the rate of 0.40% of the basic fare from 14-5-2003 in the case of domestic tickets and in the case of international tickets at the rate of 0.50% up to 13-5-2003 and at the rate of 0.80% from 14-5-2003,

respectively. In the other option, an assessee can pay service tax at the rate of 5% up to 13-5-2003 and at the rate of 8% from 14-5-2003 on the commission received from the airlines.

3. The dispute in the present case arose on account of the fact noticed by the Revenue that the assessee had taken suo motu refund of service tax of Rs. 3,17,661/- on account of service tax already paid in respect of the tickets which were cancelled.

4. In appeal, the Commissioner (Appeals) upheld the order passed by the Assessing Officer. However, the Tribunal accepted the appeal filed by the assessee. The contention raised by the assessee before the Tribunal was based on circular dated 26-6-1997 of the Central Board of Excise and Customs (for short, "the Board") and also an order passed in the case of the assessee in Jaipur jurisdiction whereby the claim of refund/adjustment of the service tax on the cancelled tickets was accepted by the department. It was noticed in the circular that cancellation or modification of tickets is a common phenomenon and frequent feature in air travel. Details of cancelled or modified tickets are provided by a travel agent in the fortnightly returns filed and adjustment of the commission is made subject to final approval of the airlines. The commission is ultimately paid by the airlines on the net commission received by a travel agent. Accordingly, no question arises for separate claim of refund of service tax.

5. The contention of learned Counsel for the Revenue that the respondent-assessee should have made an application for claiming the refund has no legs to stand, in view of the circular of the Board, as is relied upon by the Tribunal. Further, the contention that the case was of unjust enrichment is also misconceived for the reason that there is no material on record to show that the amount of service tax was charged from any customer. In fact, such an argument could not possibly be raised for the reason that once the ticket booked by a passenger is cancelled, there was no question of payment of even the fare, what to talk of service tax thereon. The finding recorded by the Tribunal is in conformity with the law. No substantial question of law arises in the present appeal.

6. The appeal is dismissed.