

(2014) 03 CESTAT CK 0021

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 1343 Of 2010

M/s Globe Forex And Travels Ltd.

APPELLANT

Vs

CCE, Jaipur-I

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Finance Act, 1994 — Section 65(105)(I), 65(19), 76, 77, 78
Service Tax Rules, 1994 — Rule 6(7)

Citation : (2014) 03 CESTAT CK 0021

Hon'ble Judges : G. Raghuram, J; Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Jatin Mahajan, J. Sahay

Final Decision : Allowed

Judgement

1. The appellant are an air travel agent whose services were taxable under Section 65(105)(I) of the Finance Act, 1994. During the period of dispute i.e. from April 2002 to December 2004, a person providing service as an air travel agent in relation to booking of passage for air travel had two options for discharging his service tax liability he could either pay service tax at the normal rate on the gross amount of commission received by him from the airlines or in the alternative, he could pay service tax under sub-Rule (7) of Rule 6 of the Service Tax Rules, 1994 at the rate specified in this sub-Rule on the basic fare. During the period of dispute, the rate prescribed under Rule 6(7) was the 0.25% of the basic fare in the case of domestic bookings and 0.5% of the basic fare in the case of international bookings. The appellant during the period of dispute had opted to discharge service tax liability under Rule 6(7) of the Service tax Rules. The first point of dispute is as to whether the service tax paid and collected from the client can be adjusted

suo moto for payment of service tax when the air tickets booked had been cancelled and in respect of which he would not get any commission from the airline. The second point of dispute is as to whether the amount charged by the appellant from his customers for arranging visa is taxable as under Business Auxiliary Service. The third point of dispute is as to whether service tax is chargeable on the cancellation charges, which are a part of the airfare retained by the appellant on cancellation of tickets. The Jurisdictional Assistant Commissioner vide order-in-original dated 13/1/10 decided each of the above three points against the appellant and on this basis, confirmed the service tax demand of Rs.1,23,640/- alongwith interest and beside this, imposed penalty of Rs.1,23,641/- under Section 76 of the Finance Act, 1994 and same amount of penalty under Section 78 of the Finance Act, besides another penalty of Rs.500/- under Section 77. On appeal being filed to Commissioner (Appeals) against this order, the Commissioner (Appeals) vide order-in-appeal dated 28/07/10 dismissed the appeal. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri Jatin Mahajan, Advocate, the learned Counsel for the appellant, pleaded that as regards the issue as to whether visa charges, which are the charges for arranging visa for their customers, would attract service tax as Business Auxiliary Service, this activity is not covered by any of the clauses of the definition of Business Auxiliary Service under Section 65(19), that even the impugned order does not mention as to under which clause of the definition of Business Auxiliary Service under Section 65(19) this activity of the appellant is covered, that as regards the cancellation charges, since in respect of cancelled tickets the appellant are not receiving any commission from the airlines who are the recipient of their services, no service tax can be charged on the same, that as regards suo moto adjustment of the service tax payment under Rule 6(7) in respect of certain bookings for air travel on the basic fare basis in cases where the bookings were cancelled, the suo moto adjustment of the service tax paid in such cases of cancelled tickets for discharging service tax liability in respect of other bookings, is permissible in terms of judgment of Honâ??ble Punjab & Haryana High Court in the case of CCE & ST, Jalandhar vs. Janta Travels (P) Ltd. reported in 2009 (13) S.T.R. 488 (P&H), wherein Honâ??ble High Court held

that such adjustment is permissible, as the question of unjust enrichment does not arise for the reason that the records do not show charging of service

tax from the customers and the payment of fare does not arise when the tickets are cancelled by the passenger and that in view of the above, the

impugned order is not correct.

4. Shri J. Sahay, the learned DR, defended the impugned order by reiterating the findings of the Commissioner (Appeals). With regard to service tax

on the cancellation charges, he pleaded that in terms of the Board's Circular No. 843/3/97-TRU dated 26/6/97 service tax is payable on the

cancellation charges.

5. We have considered the submissions from both the sides and perused the records.

6. As regards, the demand of service tax on the amount charged for arranging visa for their clients, we find that this activity is not covered by any of

the clauses of the definition of Business Auxiliary Service as given in Section 65(19) of the Finance Act, 1994, therefore, we hold that this activity is

not taxable under Business Auxiliary Service during the period of dispute and, hence, the demand of service tax on this amount is not sustainable.

7. As regards, the suo moto credit of service tax paid in respect of cancellation of tickets, we find that this issue stands decided in favour of the

appellant by the judgment of Hon'ble Punjab & Haryana High Court in the case of CCE & ST, Jalandhar vs. Janta Travels (P) Ltd. (supra) and,

hence, the impugned order on this issue is not sustainable.

8. As regards the service tax demand on the cancellation charges, these charges are collected from the persons booking the air ticket and this is not

the amount received from the appellant's client - the airlines. It is not disputed that in respect of cancelled tickets, the airlines do not give any

commission whatsoever to the appellant. In view of this, we hold that no service tax would be payable under Section 65(105)(I) of the Finance Act,

1994 on the cancellation charges which are a part of the airfare received by the appellant from the persons booking the air ticket who, subsequently,

had cancelled the same. Moreover in any case, in terms of exemption Notification No. 22/97-ST dated 26/06/97 the amount received by the air travel

agent, which is in excess of the commission received by him from the airline for the booking of passage for travel by air, was exempt from service tax

and in terms of this exemption notification no service tax would be leviable on the cancellation charges.

9. In view of the above discussion, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)