

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.464/2011

(Arising out of Order-in-Appeal No. 48/2011 (MST) dated 25.4.2011 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Asveen Air Travels (P) Ltd.

No. 10, Ankur Plaza
113, G.N. Chetty Road
T. Nagar, Chennai – 600 017.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai South Commissionerate
MHU Complex, 692, Anna Salai
Nandanam, Chennai – 600 035.

Respondent

APPEARANCE:

Ms. Radhika Chandrasekar, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Shri Raju, Member (Technical)

Final Order No. **40143 / 2022**

Date of Hearing: 19.4.2022
Date of Decision: 21.4.2022

Per Ms. Sulekha Beevi C.S.

The appellant is engaged in providing service under the category of 'Air Travel Agency Service' and are paying service tax on the commission received from the airlines. During the course of investigation conducted by the Service Tax Department, it was found that the appellant had received incentives / commission from CRS Developers (Centralized Reservation System) namely M/s. Galileo India Pvt. Ltd., M/s. Abacus Distribution System (India) Pvt. Ltd., M/s. Amadeus India Pvt. Ltd. for booking of tickets through the

computerized reservation booking system offered by the said companies. The department was of the view that the said incentive received is subject to service tax under the category of 'business auxiliary service'. Show Cause Notice was issued proposing to demand service tax for the period from November 2003 to March 2008 along with interest and also for imposing penalty. After due process of law, the original authority confirmed the demand, interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, learned Counsel Ms. Radhika Chandrasekar appeared and argued the matter. She submitted that the issue is no longer res integra and settled by the decision of the Larger Bench of the Tribunal in the case of Kafila Hospitality and Travels Pvt. Ltd. reported in 2021-TIOL-159-DEL-LB.

3. The learned AR Shri Arul C. Durairaj appeared for the respondent.

4. Heard both sides.

5. The issue that arises for consideration is whether the incentive received by the appellant for using the CRS Developer is subject to service tax or not. The Larger Bench in the case of Kafila Hospitality and Travels Pvt. Ltd. (supra) has held that the said incentive is not subject to levy of service tax. The relevant para is noted under:-

“2. Certain essential facts need to be stated for appreciating these issues. The appellant is an approved agent of International Air Ticketing Association [IATA] and is engaged in providing air tickets. The travel industry basically comprises of five key players namely airlines, travel agents, Central Reservation System [CRS] Companies, sub-agents and passengers. The *airlines* provide air transport services to passengers and discharge their service tax liability in terms of Section 65(3b) read with Section 65(105)(zzzo) of

the Finance Act, 1994 [Finance Act]. The *travel agents* accredited by IATA are authorized to sell the air travel services provided by airlines to customers/sub-agents in the form of airline tickets. *CRS Companies* provide an online portal for booking of tickets offered by various airlines. They enter into agreements with airlines for rendering 'Online Information Data Access and Retrieval' [OIDAR] services, wherein they collate data such as ticket availability, price, duration of journey, etc., for access by subscribers. CRS Companies also enter into subscriber agreements with IATA agents wherein the IATA Agents are permitted to use the data base available on the portal for booking of airline tickets for passengers/sub-agents. *Sub-agents* can also purchase airline tickets from the IATA agents for their customers (passengers). The *passengers* are the ultimate recipient of air travel services.

3. IATA agents are persons who have been authorized to sell airline tickets directly from the airlines to passengers/sub-agents. For sale of tickets, the IATA agents receive commission from the airlines. In addition to the said commission received for booking of airline tickets, the airlines also incentivize IATA agents by paying target-based incentives, which are linked to guaranteed booking of a minimum number of airline tickets. In certain cases, sub-agents also book airline tickets through IATA agents. In a situation where a sub-agent achieves a pre-determined target of bookings through a particular IATA agent, the IATA agent pays an incentive to the sub-agent.

4. The CRS Companies provide OIDAR services to airlines. In lieu of these services, the airlines pay consideration to the CRS Companies in the form of 'charges/commission'. The CRS Companies also allow IATA agents to subscribe to their portals for booking tickets for the passengers/sub-agents. Earlier, the IATA agents were charged by the CRS Companies for access to the portals. However, due to increasing competition in the market, the CRS Companies stopped charging the agents for booking through the portal and instead, in order to increase the flow of business, the CRS Companies started to part with a portion of their consideration (charges/commission) and paid the same to the IATA agents when the agents achieve a minimum quantum of bookings through the concerned CRS portal. This incentive is normally termed as 'CRS commission'. The three CRS Companies involved are *Amadeus India Private Limited [Amadeus]*, *Interglobe Technology Quotient Pvt. Ltd. [Galileo]* and *Abacus India [Abacus]*.

41. On a consideration of the entire matter it transpires that the following two main issues arise for determination :-

(Q) Whether service tax can be levied under the category of 'business auxiliary service' on target based incentives paid to the travel agents by airlines by alleging that the travel agents are promoting and marketing the business of the airlines; and

(Q) Whether the commission paid by CRS Companies to travel agents can be subjected to service tax under the category of

'business auxiliary service' by alleging that the travel agents are promoting and marketing the business of such companies.

58. Thus, by rendering of services connected to travel by air, a travel agent would render "air travel agent" services, which services cannot be said to be for 'promotion or marketing' for the airlines.

(Q) Whether the air travel agent is promoting the business of CRS companies

71. This apart, the definition of BAS would also reveal that the service provider must promote or market the service of a client. As noticed above, it is not a case where the air travel agent is promoting the service of airlines/CRS Companies. The air travel agent is, by sale of airlines ticket, ensuring the promotion of its own business even though this may lead to incidental promotion of the business of the airlines/CRS Companies. Thus, in terms of the provision of Section 65A(2)(a) of the Finance Act, the classification of the service would fall under "air travel agent" services and not BAS.

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.

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.

6. Following the said decision, we are of the considered opinion that the demand cannot sustain and requires to be set aside, which we

hereby do. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in open court on 21.4.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)

(RAJU)
Member (Technical)

Rex