

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41382 of 2013

(Arising out of Order-in-Appeal No. 151/2013 (MST) dated 21.01.2013 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. BCD Travels India Private Limited

: Appellant

9-F, P.M. Towers, 136, Greams Road,
Chennai – 600 006

VERSUS

The Commissioner of Service Tax

: Respondent

26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Ms. Varshitha G., Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40304 / 2023

DATE OF HEARING: 10.04.2023

DATE OF DECISION: 26.04.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief undisputed facts are that the appellant is in the business of rendering Air Travel Agent Service and it appears that the appellant has been discharging Service Tax on the 'basic fare' in terms of Rule 6 (7) of the Service Tax Rules, 1994. It is a matter of record that the appellant had received commission from Air India–Indian Airlines, Kingfisher and Jet Airways @ 3% on the basic fare and on surcharges levied and retained by such airlines on all tickets sold in India, which included fuel surcharge.

2.1 Entertaining a doubt that the appellant did not include the amount of fuel surcharge received by it in the 'basic fare', a Show Cause Notice dated 19.06.2009 came to be issued thereby proposing to demand Service Tax on the commission received on the fuel surcharge for the period from December 2008 to February 2009, along with applicable interest and penalty.

2.2 The appellant appears to have filed a detailed reply justifying its stand as to the non-includability of commission received on fuel surcharge in the basic fare, but however, not accepting the plea of the appellant in adjudication, the Adjudicating Authority, vide Order-in-Original No. 57/09 dated 13.10.2009 appears to have confirmed the proposals carried in the Show Cause Notice.

2.3 Feeling aggrieved by the above demands, it appears that the appellant had preferred first appeal before the Commissioner of Central Excise (Appeals), Chennai, who also having not agreed with the plea of the appellant and thereby dismissing its appeal vide impugned Order-in-Appeal No. 151/2013 (MST) dated 21.01.2013, the appellant has assailed the same in this appeal before this forum.

3. Ms. Varshitha G., Learned Advocate, appeared for the appellant and Shri M. Ambe, Learned Deputy Commissioner, represented the respondent.

4. We have heard the rival contentions and we have gone through the orders of lower authorities and also the orders of co-ordinate Benches of the CESTAT relied upon during the course of arguments.

5. After hearing both sides, we find that the only issue to be decided by us is: whether the commission received by the appellant on the fuel surcharge is includible in the basic fare?

6. Rule 6 (7) of the Service Tax Rules, 1994 reads as under: -

*"The person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability **instead of paying service tax at the rate specified in section 66 of Chapter V of the Act** and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.*

*Explanation. - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare **on which commission is normally paid** to the air travel agent by the airline."*

(Emphasis supplied in bold by us)

7.0 Various CESTAT Benches have had an occasion to interpret the term "basic fare" appearing in the Explanation to Rule 6 (7) *ibid.*, in the following cases: -

- (i) *M/s. Kafila Hospitality and Travels Ltd. v. Commissioner of Service Tax, Delhi (Final Order No. 54843/2014 dated 14.10.2014) [2015-TIOL-406-CESTAT-DEL];*
- (ii) *M/s. Akbar Travels of India Pvt. Ltd. v. The Principal Commissioner of Service Tax, New Delhi (Final Order No. 50146/2020 dated 20.01.2020) [2020-TIOL-414-CESTAT-DEL];*
- (iii) *M/s. Japan Airlines International Company Ltd. v. Commissioner of Service Tax, New Delhi (Final Order No. 52422/2016 dated 08.07.2016) [2016-TIOL-1930-CESTAT-DEL]*

7.1 The Delhi Bench in the case of *M/s. Kafila Hospitality and Travels Ltd. (supra)* has, after considering the rival contentions, remitted the matter back to the file of the Commissioner for *de novo* decision after observing as under: -

"7.

*.... In our view, the term "basic fare", in terms of its definition in Rule 6(7), is not the gross fare including fuel surcharge, but is that part of the gross airfare on which the concerned Airlines normally pay the commission to the Air Travel Agent. Therefore, **what is relevant for the purpose of Section 6(7) is as to on which part of the airfare, the commission was being normally paid by the Airlines to the Air Travel Agents.** According to the appellant, they have evidence to prove that they have discharged the service tax liability under Rule 6(7) only on that part of the fare on which the commission was being paid, but this plea has not been considered by the Commissioner. ..."*

(Emphasis supplied in bold by us)

7.2 In the case of *M/s. Akbar Travels of India Pvt. Ltd. (supra)*, the Principal Bench has, after following the order in *M/s. Kafila Hospitality and Travels Ltd. (supra)*, chosen to remit the matter back to the file of the Principal Commissioner for passing a fresh order since the Bench was satisfied that the Principal Commissioner had not considered the contentions of the appellant therein that the commission on fuel surcharge was not paid normally to the Air Travel Agents by the Airlines.

7.3 In the case of *M/s. Japan Airlines International Company Ltd. (supra)*, the co-ordinate Delhi Bench has, however, held that fuel surcharge was includible in the assessable value, but it is clear from a reading of the said order that the Bench did not consider the order of the very same Bench in the case of *M/s. Kafila Hospitality and Travels Ltd. (supra)* and has chosen to hold so on the basis of the provisions of Section 67 of the Finance Act, 1994.

8.1 Rule 6 (7) *ibid.*, which is extracted in the above paragraphs, clearly gives an option to the taxpayer, specifically an Air Travel Agent, to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings and at the rate of 1.2% of the basic fare in the case of international bookings instead of paying Service Tax at the rate specified in Section 66 of the Finance Act, 1994, and as per Section 66, the rate of Service Tax was a flat 12% of the value of taxable services. Section 67 *ibid.* provides for the assessable value to be the gross amount charged by the service provider for such service.

8.2 What is relevant from the above is that the option is given to the taxpayer to remit the Service Tax either in terms of Rule 6 (7) *ibid.* or Section 67 *ibid.*, and once an option is exercised by the taxpayer, the Revenue cannot find fault with the option so exercised.

8.3 Admittedly, the appellant has chosen to pay Service Tax in terms of Rule 6 (7) *ibid.* and therefore, tax cannot be demanded by applying the provisions of Section 67 *ibid.* Hence, the ratio in *M/s. Japan Airlines International Company Ltd. (supra)* is not applicable.

9. An airline may pay commission *inter alia* on various items, apart from the basic fare, which are indicated clearly in the ticket issued to a traveller. The basic fare is clearly indicated, followed by various other charges in such ticket. Hence, in our view, when the basic fare is so specifically indicated, the authorities cannot add or delete anything to the same to say that the basic fare should also include those other things.

9.2 Rule 6 (7) has to be read, therefore, in the context of the break-ups given in the ticket wherein the basic fare stands clearly indicated and viewed thus, the interpretation drawn by the lower authorities to include the commission on fuel surcharge in the basic fare cannot hold any water, for which reason the impugned order cannot sustain.

10. In view of our above discussions, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Order pronounced in the open court on **26.04.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd