

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 58369 Of 2013**

[Arising out of OIA No. 30/ST/Appl/DLH-IV/2013 dated 15.05.2013 passed by the Commissioner (Appeals) of Central Excise, Delhi-IV]

**Bird Travels P Ltd.**

E-9, Connaught House, Connaught Place,  
New Delhi-110001

**: Appellant (s)**

Vs

**C.S.T- Delhi-IV**

New CGO Complex, NH-IV. NIT, Faridabad, Haryana

**: Respondent (s)**

APPEARANCE:

Shri J. M. Sharma, Consultant for the Appellant  
Shri Raman Mittal, DR for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**ORDER No. A/60454/2023**

Date of Hearing:25.09.2023

Date of Decision:25.09.2023

**Per : S. S. GARG**

The present appeal is directed against the impugned order dated 15.05.2013 passed by the Commissioner (Appeals) of Central Excise, Delhi-IV whereby the Ld. Commissioner (Appeals) has upheld the order-in-original and rejected the appeal.

2. Briefly the facts of the present case are that the appellant is engaged in the business of providing travel relating services to both domestic as well as international travellers. The appellant is also functioning as General Sales Agent (GSA) for Foreign Airlines, namely, HANNAIR, S.N. Brussels and Iceland Air and paying service tax in respect of booking made by the appellant as International Air Transport Association Agent (IATA). The Department entertained a view that the GSA Commission received from the said airlines is liable

to service tax under the category of 'Business Auxiliary Services' as the appellant is promoting and marketing the services provided by the Foreign/International Airlines. On these allegations, the show cause notice dated 15.03.2010 was issued and after following due process, the original authority vide its order dated 21.07.2011 confirmed the demand alongwith interest and also imposed penalties both under Section 77 and 78 of the Finance Act, 1994. Aggrieved by the said order, the appellant filed appeal before the Ld. Commissioner (Appeals) who rejected the appeal of the appellant. Hence, the present appeal.

2. Ld. Consultant appearing on behalf of the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellant on the same issue for the earlier period and later periods, had filed four appeals including the present appeal before this Tribunal, the details of which are given herein below:-

| Appeal No.           | Impugned Order No.                              | Period of Dispute        | Amount involved                                                        |
|----------------------|-------------------------------------------------|--------------------------|------------------------------------------------------------------------|
| ST/104/2010-CU(DB)   | OIO No. 48/PKJ/CCE/ADJ/09 dated 19.10.2009      | July 2003 to March 2008  | Rs. 22,65,600/- alongwith interest. Demand for Normal Period confirmed |
| ST/58369/2013-CU(DB) | OIA No. 30/ST/Appl/DLH-IV/2013 dated 15.05.2013 | April 2008 to March 2009 | Rs. 6,75,817/- alongwith interest                                      |
| ST/55430/2013-       | OIA No.                                         | April 2009 to            | Rs. 14,91,248/- alongwith                                              |

|                          |                                               |                                   |                                          |
|--------------------------|-----------------------------------------------|-----------------------------------|------------------------------------------|
| CU(DB)                   | 316/ST/DLH/2012<br>dated 27.11.2012           | September 2010                    | interest                                 |
| ST/54736/2014-<br>CU(DB) | OIA No.<br>90/ST/DLH/2014<br>dated 08.07.2014 | October 2010 to<br>September 2011 | Rs. 16,44,972/-<br>alongwith<br>interest |

- He further submitted that the department has also filed Appeal No. 188/2010-CU(DB) against the Order of Commissioner with a prayer that the extended period of limitation as per section 73(1) of Finance Act, 1994 maybe invoked and penalty under Section 78 of the Act may be imposed but the Tribunal dismissed the Department's Appeal vide Final Order No. 52656-52659/2016 dated 28.06.2016.
- He further submitted that even if it is accepted that the appellant provided Business Auxiliary Service, the service tax is not payable as the beneficiaries of the services provided by the appellant were Foreign Airlines who do not have offices in India and the payment of the GSA commission was received in foreign exchange. Hence, the services rendered by the appellant would amount to export of services.
- He further submitted that the Tribunal in the appellant's own three cases for the periods July 2003 to march 2008, April 2009 to September 2010 and October 2010 to September 2011 has been pleased to hold in favour of the appellant on limitation by rejecting department's appeal. The Tribunal further held that the Business Auxiliary Service (BAS) provided by the appellant to the three foreign airlines, namely, Hann Air, S.N Brussels & Ice land Air as GSA are to be treated as export of service. He then referred to paras 8 & 9 of the Final Order No. 52656-52659 of 2016 dated- 28-07-2016 in their own case and paras 4 to 7 of Misc Order No. 50121-50123/2017 dated 10-

03-2017. He further submitted that in the order passed by the Tribunal there was certain mistakes and thereafter he filed ROM Application pointing out some error apparent in the order and his miscellaneous application was allowed vide Misc Order No. 50121-50123/2017 dated 10-03-2017 wherein the following para 9 was substituted as under:-

“9. Considering the discussion and analysis, as above, appeal No. ST/188/2010 by Revenue against the impugned order dated 29/10/2009 is rejected. The C.O. filed is also disposed of. Appeals filed by BTPL (ST/104/2010, ST/55430/2013 and ST/54736/2014) are disposed of in view of above findings on export of services. The tax liability, if any, is upheld only where the conditions are not fulfilled”.

- He further submitted that the department has filed appeal against the Tribunal's Final Order No. 52656-52659 of 2016 dated-28-07-2016 before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the appeal as not pressed for.
- Ld. Consultant further prayed that the present appeal should also be disposed of by relying earlier Final Order dated 28.07.2016 disposing three appeals of the appellant passed by the Principal Bench, CESTAT Delhi.

3. On the other hand, the Ld. DR reiterated the findings in the impugned order.

4. After considering the submissions of both the parties and perusal of the records, I find that the appellant filed above stated four appeals before the Tribunal but the Tribunal vide its Final Order dated 28.07.2016 disposed of three appeals only and the present appeal could not be tagged with the earlier appeals as the same was transferred to the CESTAT, Chandigarh for disposal.

5. Further, I find that the issue involved in all four appeals is identical and the Principal Bench of Tribunal while disposing of the three appeals has held as under:-

“8. In respect of two appeals by BTPL against the impugned orders dated 27-11-2012 and 8-7-2014, BTPL strongly contended that in respect of three foreign airlines, Hann Air, S.N. Brussels and Iceland Air, the services provided as GSA are to be treated as export of services. It is the case of BTPL that these airlines do not have any office in India and as such based on the decision of the Tribunal in *Paul Merchants* - [2013 \(29\) S.T.R. 257](#), there is no service tax liability on export of services. We find that in the impugned order dated 27-11-2012 the Id. Commissioner (Appeals) categorically recorded that benefit of services have accrued outside India. However, he held that services have been provided and used in India and cannot said to be fulfilling the condition of service “used outside India” in terms of Board clarification dated 13-5-2011. We find that the admitted facts that these airlines do not have any office or branch in India and BTPL are providing service to these airlines in terms of GSA agreement. The period involved is from April, 2008 to September, 2010. In *Microsoft Corporation (I) Pvt. Ltd.* - [2014 \(36\) S.T.R. 766](#) (Tri.-Del.) it was held that there is no ambiguity that legislature in terms of Export of Services Rules, 2005 intended that services consumed outside India shall be exported. It was further held that service that is sought to be taxed is the service provided to the person paying for the service and not the service which is provided to a person in India who is not paying for the service though he may be beneficiary of such arrangement. Here, in the present case the admitted facts are that the business of foreign airlines are promoted by BTPL. If such airlines do not have any office/establishment in India and consideration is paid in convertible foreign currency, we find BTPL are not liable to service tax under BAS as services are covered by export. Reference can also be made to Tribunal’s decision in *GAP International Sourcing (India) Pvt. Ltd.* - [2015 \(37\) S.T.R. 757](#) (Tri.-Del.). It was held that service tax, though levied on commercial activities, is a destination based consumption tax and that it is not a charge on business but on the consumer.

9. Considering the discussion and analysis as above, both the appeals (ST/104/2010 & ST/188/2010) against the impugned order dated 19-10-

2009 are rejected. The C.O. filed also disposed of. Appeals filed by BTPL (ST/55430/2013 & ST/54736/2014) are disposed of in view of above findings on export of services. The tax liability, if any, is upheld only where the conditions are not fulfilled.”

6. Further, I find that while disposing of the ROM Application, the Tribunal in Para 9 has held that appeal No. ST/188/2010 filed by Revenue against the impugned order dated 29/10/2009 is rejected. The Cross Objection filed by the assessee is also disposed of. Appeals filed by BTPL (ST/104/2010, ST/55430/2013 and ST/54736/2014) were disposed of in view of above findings on export of services.

7. Further, I find that the department appeal before the Hon'ble Apex Court was also dismissed as not pressed for as reported in the Supreme Court Website. Copy of which is annexed herewith.

8. Therefore, by following the ratio of the said decision in the appellant's own case cited (supra), I allow the appeal of the appellant on the same terms as was allowed in terms of the decision of the CESTAT, New Delhi vide Final Order No. 52656-52659 of 2016 dated-28-07-2016.

9. Appeal is accordingly disposed of.

*(Operative part of the order pronounced in the open Court)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)