

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD
REGIONAL BENCH - COURT NO. 3**

SERVICE TAX Appeal No. 219 of 2012-DB

[Arising out of Order-in-Original/Appeal No 29-2012-STC-KANPAZHAKAN-COMMR-A--AHD dated 24.01.2012 passed by Commissioner of Central Excise-AHMEDABAD]

Akshar Tours And Travels

.... Appellant

9, City Centre, 2nd Floor, Swastik Cross Road,,
C G Road, Navrangpura, AHMEDABAD
GUJARAT -380009

VERSUS

Commissioner of Central Excise & ST, Ahmedabad

.... Respondent

Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE :

Shri Jigar Shah, Advocate & Shri KJ Kinariwala, Consultant for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 15.07.2024

DATE OF DECISION: 13.08.2024

FINAL ORDER NO. 11741/2024

RAMESH NAIR :

This appeal is directed against Order-In-Appeal No.29/2012(STC)/K. Anpazhakan/COMMR (A)/AHD dated 27.01.2012 whereby the Learned Commissioner (Appeals) upheld the demand of service tax under the category of Business Auxiliary Service and service tax demand under the category of Tour Operator Service. Therefore, the present appeal filed by the Appellant.

2. Shri Jigar Shah, Learned Counsel with Shri K.J Kinariwala, Learned Consultant appearing on behalf of the Appellant at the outset submits that business auxiliary service was confirmed in relation to the activity of commission received towards booking tickets, therefore, the correct classification should be Air Travel Agent Service and not Business Auxiliary Service. Therefore, the demand is not sustainable.

2.1 As regard the demand of Tour Operator Service, he submits that the appellant is only arranging the package tour and not all the activities which are required for classifying the service under Tour Operator Service such as planning, scheduling, organizing or arranging tour for individual and group basis. He submits that all these activities are not carried out by the appellant, therefore, the service does not fall under the category of Tour Operator Service.

2.2 He submits that on both the issues there are judgments of this Tribunal in their favour, therefore, the extended period could not have been invoked and the demand is clearly time bar. He placed reliance on the following judgments:-

- (a) AIR India – 2017 (5) GSTL 72 (T)
- (b) Jet Airways (India) Ltd - 2016 (41) STR 225 (T)
- (c) Hi Tours Mamallapuram Pvt Ltd – 2023 (13) Centax 151 (T)
- (d) Ram Krishna Travels Pvt Ltd - 2023 (5) Centax 156 (T)
- (e) Coromandal Infotech India Ltd – Final Order No.40013/2019 dated 04.01.2019
- (f) Amar Travels India vs. CST – 2018 (10) GSTL 77 (T)

3. Shri P. Ganesan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that as regard the demand under the category of Business Auxiliary Service, the activity of the appellant is taking commission on booking of tickets, therefore, the said activity falls under the category of Air Travel Agent Service. However, both the lower authorities have confirmed the demand under Business Auxiliary Service, for this reason itself the demand is prima-facie not sustainable on merit.

4.1 As regard the demand under Tour Operator Service, the appellant heavily relied on the judgment of this Tribunal in the case of Ram Krishna Travels Pvt. Limited wherein on the identical activity it was held that the service cannot be classified under Tour Operator Service as arranging the package tour do not involve all the activities which are required to classify the service under Tour Operator Service. Therefore, on this service also the appellant have a prima facie strong case on merit. We find that since on both the issues there are judgments in favour of the appellant we are of the view that the appellant had entertained their bonafide belief that their activity is not liable to service tax, therefore, the demand for the period 2003 to 2005-2006 raised by show cause notice dated 21.04.2009 is time bar on the ground of limitation itself. Therefore, we are of the view that the total demand of Rs. 1,92,508/- is time bar as the entire demand is under extended period. Therefore, we set aside the demand only on the ground of time bar without conclusively deciding on the merit.

5. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 13.08.2024)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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