

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 90084 of 2014

(Arising out of Order-in-Original No. 49-51/STC-I/SKS/14-15 dated
12.09.2014 passed by Commissioner of Service Tax-I, Mumbai)

**M/s Riya Travel & Tours (I)Appellant
Pvt. Ltd.**

Gulab Building,
237, P.D'Mellow Road,
Fort, Mumbai-400001

VERSUS

**Commissioner of Service Tax,Respondent
Mumbai-I**

5th Floor, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai-400020

WITH

Service Tax Misc. Application (Cross) No. 91042 of 2015

(on behalf of Respondent)

In

Service Tax Appeal No. 85138 of 2015

(Arising out of Order-in-Original No. 49-51/STC-I/SKS/14-15 dated
12.09.2014 passed by Commissioner of Service Tax-I, Mumbai)

**Commissioner of Service Tax,Appellant
Mumbai-I**

5th Floor, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai-400020

VERSUS

**M/s Riya Travel & Tours (I)Respondent
Pvt. Ltd.**

Gulab Building,
237, P.D'Mellow Road,
Fort, Mumbai-400001

Appearance:

Shri Gajendra Jain, Advocate for the Appellant/Respondent
Shri M.K. Sarangi, Authorized Representative for the Respondent/
Appellant

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)****FINAL ORDER NO. A/88533-88534 / 2018**

Date of Hearing: 19.11.2018

Date of Decision: 19.11.2018

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein, M/s Riya Travel & Tours (India) Pvt. Ltd. is *inter alia*, engaged in rendering services as an air travel agent and for that purpose, is registered with the service tax department.

1.2 The normal practice followed in the trade parlance for booking of air tickets are that the airlines appoint General Sales Agents (GSAs), entrusted with the task of soliciting, promoting and selling the tickets for the airlines; the tickets are issued by the GSAs only and other travel agents are not allowed to sell the tickets of such airlines; any customer intending to book a ticket, approaches the agent (other than GSA), who obtains the details such as name of the passenger, age, gender, passport number etc., and approaches the GSA of the particular airline for booking of ticket, which is issued directly in the name of the passenger. For providing the services of booking of tickets, the GSAs discharge the service tax liability under the taxable category of "Air Travel Agent Service". The GSAs also pay commission amount to the agents on the basis of tickets booked by them.

1.3 In the present case, for booking of tickets on behalf of the passengers, the appellant had received the commission amount from the GSAs. The department proceeded against the appellant for recovery of service tax on the commission amount received by it from the GSAs under the taxable head of "Business Auxiliary Service". Further, proceedings were also initiated against the appellant for recovery of service tax on the

commission amount received from the branch offices under such category of service. The show cause notices dated 21.04.2009 and 15.04.2010 issued by the department were adjudicated by the learned Commissioner of Service Tax – I, Mumbai vide the impugned order dated 16.09.2014. Out of the service tax demand of Rs.1,59,10,145/-, proposed for recovery in the show cause notice dated 21.04.2009, the learned adjudicating authority has partly confirmed the service tax demand of Rs.84,19,335/- and dropped the balance proposed demand of Rs.74,90,810/-. Further, the impugned order also confirmed the service tax demand of Rs.5,328/- and Rs.2,089/-, as proposed for recovery in the show cause notice dated 15.04.2010. It was also ordered for recovery of interest on the said confirmed service tax demands. Besides, the impugned order has also imposed penalties on the appellant under Section 76, 77 and 78 of the Finance Act, 1994.

1.4 In support of confirmation of the service tax demand on the appellant, the learned adjudicating authority has held that GSAs are providing air travel services to the passengers with the help of the appellant and thus, on the commission amount received from the GSAs, the appellant is liable to be taxed under the taxable category of "Business Auxiliary Service". The impugned order has dropped the partial demand proposed for recovery in the show cause notice, on the ground that on the commission amount received by one branch from another branch of the same company cannot be subjected to levy of service tax inasmuch as the branch offices and the head office are belonging to one corporate entity and there is no involvement of two separate persons in the transactions. Feeling aggrieved with the impugned order dated 16.09.2014, both the assessee-appellant and Revenue have preferred appeals before the Tribunal.

2. The assessee-appellant has assailed the impugned order on the ground that the services provided are in connection with the booking of passage by air, taxable under the category of Air Travel Agent Service and not under a general category of

Business Auxiliary Service. The activities undertaken by the assessee-appellant cannot be equated with the term "promotion" or "marketing" of general sales agents and as such, cannot be taxed under business auxiliary service. Revenue has filed the appeal against dropping of the proposed service tax demand on the services provided by other branches of the assessee-appellant. It has been contended by Revenue that since the branch offices had transferred part of the commission amount to the assessee on booking of tickets by them, the said commission amount should be subjected to levy of service tax under the taxable category of business auxiliary service.

3. Heard both sides and perused the case records, including the written submissions filed by the assessee-appellant.

4. In the present case, the commission amount earned by the appellant is divided into two categories. Firstly, the commission amount received from the GSAs for booking of the tickets through them; secondly, the commission received by the other branches for ticket booking through them to ascertain profitability of the branches separately. So far as booking of tickets through the GSAs are concerned, the adjudicating authority has held that the passengers through such GSAs are providing business to the airlines, for which the GSAs received commissions from the airlines and passed on the same to the sub-agent, the assessee-appellant in the present case. Thus, it has been contended by Revenue that the appellant is acting as an agent in the transactions made between the GSAs and the customers and for that purpose, received the commission amount from the GSAs. According to Revenue, such amount of commission received by the appellant should be liable to service tax under the category of business auxiliary service.

5. On perusal of the statutory provisions vis-a-vis the activities undertaken by the appellant, we find that the appellant is not an agent, working on behalf of the customers for facilitating purchase of tickets from the GSAs. The customers

approaching the appellant for booking of tickets are not aware about the particular GSA, who issues the ticket through the appellant. In order to fall under the purview of business auxiliary service, there must be involvement of three parties namely, the service provider, service receiver and the agent facilitating procurement of service for and on behalf of the service provider. In other words, all the three parties involved in the contract must be known to each other, in order to be classifiable under such head of service. It is an admitted fact on record that for booking of ticket, the passenger only approached the appellant and not the GSA. Verifying the economic aspect, the sub-agent, like the appellant approaches a particular GSA for booking of tickets. Thus, in absence of any connection between the GSA, the appellant and its customer, the activities cannot be considered as a service, exigible to service tax under the taxable category of business auxiliary service. Further, there is no difference between the nature of services provided by the GSAs and the appellant inasmuch as both of them are confined to cater to the requirement of booking of tickets, for the benefit of both the airlines and the customers. Since, GSA's payment of service tax under air travel service was accepted by the department, contrary stand cannot be taken to fasten the tax liability on the appellant under a different category of service namely, business auxiliary service. Thus, we do not find any reason to sustain the adjudged demands confirmed on the appellant.

6. With regard to the appeal filed by Revenue, it is an admitted fact on record that the head office and the branch offices of the appellant run their business under one umbrella i.e. the appellant's company incorporated under the Companies Act, 1956. The head office and the branch offices of one corporate entity cannot be termed as separate persons, one as the service provider and the other as the service receiver. Thus, in absence of any provider-receiver of service relationship, the commission amount shared by the branch office with the head office cannot be subjected to tax under such category of service.

Thus, we do not find any justifiable reason to entertain the prayer made by Revenue in support of allowing their appeal.

7. In view of the above discussions and analysis, the appeal filed by the assessee-appellant is allowed and the appeal of Revenue is dismissed. Cross objection is disposed of.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)