

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. 1

SERVICE TAX APPEAL NO. 51979 OF 2018

[Arising out of Order-in-Appeal No. 41(RK) ST/JPR/2017-2018 dated
15.2.2018 passed by the Commissioner (Appeals) and Additional
Director General, DGGSTI, Jaipur]

Incredible Indian Moments Pvt. Ltd.

Appellant

S-207, Time Square, Central Spine,
Vidhyadhar Nagar, Jaipur, Rajasthan – 302 023.

Versus

**Commissioner (Appeals) and
Additional Director General, DGGSTI,**

Respondent

C-62, Sarojani Marg, C-Scheme,
Jaipur – 302 001 (Rajasthan).

Appearance:

Present for the Appellant: Ms. Nirmala Sharma, Chartered Accountant

Present for the Respondent: Ms. Jaya Kumari, Authorised Representative

COARM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51295/2023

DATE OF HEARING : 29.08.2023

DATE OF DECISION: 15.09.2023

P V SUBBA RAO:

This appeal has been filed to assail the Order in Appeal
dated 15.2.2018¹ passed by the Commissioner (Appeals)
Jaipur whereby he rejected the appellant's appeal and upheld

¹**Impugned order**

the Order in original² dated 22.3.2017 passed by the Deputy Commissioner.

2. We have heard learned Chartered Accountant who is also the Director of the Appellant and learned authorised representative for the Revenue and perused the records.

3. The appellant is a Tour Operator and is registered as such with the Service Tax Department and it has been paying service tax on the taxable services which it provided. Its business mainly consists of organising tours for foreign tourists to India. In order to provide this service, the appellant uses the services of taxis and the operators of these taxis paid service tax and recovered it along with their service charges from the appellant. The appellant availed CENVAT credit of the service tax so paid and utilised it in paying service tax on its output service. It is undisputed that the appellant was filing its Service Tax Returns.

4. The appellant's records for the period July 2012 to March 2014 were audited and it was felt that the appellant was responsible to pay service tax on the services of the taxis which it had hired on reverse charge basis in view of Notification No. 30/2012-ST dated 20.6.2012 issued under

²OIO

section 68(2) of the Finance Act, 1994³. This section and the relevant portion of the notification are as follows:

SECTION 68. Payment of service tax. — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section[66B] in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), **in respect of such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person** and in such manner **as may be prescribed** at the rate specified in section 66B and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

Notification No. 30/2012-ST dated 20.06.2012

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession, **the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—**

I. The taxable services,—

(A)(i)

(v) **provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;**

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

³**Finance Act**

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
7.	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	Nil	100%
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%

2. This notification shall come into force on the 1st day of July, 2012.
5. As per Section 68(2) of the Finance Act if any services are notified by the Central Government, Service tax in respect of those services shall be paid by the service recipient to the extent indicated in the notification. Notification No. 30/2012-ST was issued and as per S. No. 7(a) of the table contained in it, 'in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business', 100% service tax should be paid by the service recipients and no service tax needs to be paid by the service provider.

6. The Deputy Commissioner of Service Tax issued Show Cause Notice⁴ dated 27.1.2016 to the appellant proposing to recover the service tax amounting to Rs. 2,76,808/- invoking extended period of limitation under the proviso to section 73(1) of the Finance Act along with interest and impose penalties.

7. The appellant opposed the proposals in the SCN which were, however, confirmed by the OIO and on appeal affirmed by the impugned order.

8. Learned Chartered Accountant and Director of the appellant submits that the demand is not sustainable both on merits or on limitation as follows:

(i) The notification only covers services which are provided by way of renting of motor vehicles to any person who is not in the similar line of business. Their service is tour operator service which is similar to the service of the renting of motor vehicles and what is required to attract the notification is to be 'not engaged in the similar line of business' and not 'same business'.

(ii) At any rate, service tax has already been paid by the taxi operators whose services they hired. The service tax having been paid on forward charge basis by the service provider, it cannot also now be charged on reverse charge basis from the appellant who is the service recipient.

(iii) The entire exercise is revenue neutral because if the appellant had paid service tax, it would have been entitled to CENVAT credit of the tax so paid immediately to it. Therefore, there can be no motive to evade by the appellant without which, extended period of limitation could not have been invoked. The entire demand has been made under the extended period of limitation under the proviso to section 78(1).

⁴SCN

(iv) As the demand of Service tax itself is not sustainable neither is the interest. Penalties also need to be set aside for this reason.

9. Learned authorised representative for the Revenue reiterated the findings of the impugned order and asserted that the impugned order is correct and calls for no interference.

10. We have considered the submissions on both sides and perused the records.

11. There is no dispute that the appellant is provided tour operator services and has been paying service tax on the services and has been filing ST-3 returns. To provide these services, the appellant hires taxis. Thus, the services of the taxi operators are the input services to the appellant.

12. From the invoices produced before us, it is evident that the taxi operators were paying service tax on their services considering themselves liable to pay service tax and the appellant has been taking CENVAT credit of such service tax. To charge service tax again on reverse charge basis from the appellant (the service recipient) would result in double taxation on the same service.

13. Even otherwise, the notification refers to persons 'not in the same line of business' and NOT 'persons engaged in the same business' and the two are distinct. 'Similar line of business' has a much wider connotation and therefore, it

includes their tour operator services as well. Since the appellant is in the similar line of business, it was not covered S. No. 7 (a) of the notification.

14. We also find no grounds to invoke the extended period of limitation under the proviso to section 78(1). There is no fraud or collusion or wilful mis-statement or suppression of facts or violation of the Act or Rules with an intent to evade payment of service tax.

15. The appellant has been filing service tax returns regularly and it is for the officers to scrutinise them and if necessary, call for information and if it is felt that service tax has not been correctly assessed, make the best judgment assessment and issue a notice under section 78 within the normal period of limitation. If such scrutiny is not done and a demand is not raised within time and any tax escapes assessment, the responsibility for it rests squarely on the officer and not on the assessee.

16. If the appellant had paid service tax under reverse charge mechanism, it would have been entitled to CENVAT credit on it immediately because it is its input service. Thus, the entire exercise is revenue neutral and in such a situation, the appellant cannot be alleged to have had an intent to evade payment of service tax.

17. For these reasons, the demand in the impugned order needs to be set aside. Consequently, the interest and penalties also need to be set aside.

18. For all these reasons, we find the impugned order of the Commissioner (Appeals) cannot be sustained. The impugned order set aside and the appeal is allowed.

[Order pronounced on 15/09/2023.]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

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