

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 10943 of 2013-DB**

[Arising out of Order-in-Original/Appeal No 3-4-2013-BVR-SKS-COMMR-A-AHD dated 24.01.2013 passed by Commissioner of Central Excise and Service Tax-BHAVNAGAR]

**Messrs Mahasagar Travels Limited**

**.... Appellant**

Jayshree Talkies Road, Kalwa Chowk,  
JUNAGADH, GUJARAT-362001

*VERSUS*

**Commissioner of Central Excise & ST, Bhavnagar**

**.... Respondent**

Plot No.6776/B-1, Siddhi Sadan, Narayan Upadhyay  
Marg, Beside Gandhi Clinic, Near Parimial Chowk,  
Bhavnagar, Gujarat-364001

**AND**

**SERVICE TAX Appeal No. 11032 of 2013-DB**

[Arising out of Order-in-Original/Appeal No 3-4-2013-BVR-SKS-COMMR-A-AHD dated 24.01.2013 passed by Commissioner of Central Excise and Service Tax-BHAVNAGAR]

**Gujarat Travels**

**.... Appellant**

Near Rajshree Cinema,  
Sir Pattani Road, BHAVNAGAR, GUJARAT

*VERSUS*

**Commissioner of Central Excise & ST, Bhavnagar**

**.... Respondent**

Plot No.6776/B-1, Siddhi Sadan, Narayan Upadhyay  
Marg, Beside Gandhi Clinic, Near Parimial Chowk,  
Bhavnagar, Gujarat-364001

**APPEARANCE :**

Shri Amal Dave, Advocate for the Appellant  
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 10.04.2023

DATE OF DECISION: 27.04.2023

**FINAL ORDER NO. A/11027 - 11028 / 2023**

**RAMESH NAIR :**

Briefly stated the facts of the case are that both the appellants are engaged in the inter-state and intra-state transportation of passengers and registered as Tour Operators and paying service tax in normal course of their business. However, Notification No. 20/2009-ST dated 07.07.2009 was

issued having retrospective effect which notified that levy of service tax on tour operators was required to be discontinued. Accordingly, the service tax which was paid by the appellants become refundable and consequently they filed refund application in respect of service tax paid in routine course. Though the refund was sanctioned but the same was credited in the Consumer Welfare Fund on the ground that appellant have recovered service tax from their customers and the same was shown as expenditure in the books of accounts. This order of Adjudicating Authority was upheld by the Commissioner (Appeals) therefore the present appeals are filed by the appellants.

2. Shri Amal Dave, learned Counsel appearing on behalf of the appellants argued that merely because the service tax paid by the appellant was shown as expenditure in the books of accounts that itself does not prove that the incidence of service tax was passed on to any other person therefore, the refund could not have been credited in the Consumer Welfare Fund. He placed reliance on the following judgments:-

- (a) CCE, Coimbatore vs. M/s. Flow Tech Power - 2006 (1) TMI 37-High Court (Madras)
- (b) V.M.G.R. Hotels and Resorts Pvt. Limited - 2019 (5) TMI 719-CESTAT Bangalore
- (c) Mangal Textile Mills P.Ltd. vs. UOI - 2004(171) ELT 160 (Guj.)
- (d) Eastern Shipping Agency vs. CST, Ahmd. - 2013 (32) STR 630 (Tri.-Ahmd.)
- (e) Gujarat State Fertilizers & Chemicals Limited vs. CCE, Vadodara - 2014 (309) ELT 94 (Tri.-Ahmd.)
- (f) MIRC Electronics Limited vs. CC, Ahmd. - 2013 (287) ELT 225(Tri.-Ahmd.)
- (g) CCE, Surat-I vs. Shrinathji Dying - 2011 (24) STR 108 (Tri.-Ahmd.)

(h) CCE, BBSR-I V/s. Nilachal Concrete Products (P) Limited - 2006 (1) STR 48 (Tri.-Kolkata)

(i) Amadalavalasa Cooperative Sugars Limited vs. CCE, Visakhapatnam – 2009 (15) STR 501 (Tri.-Bang.)

(j) CCE vs. Crane Betel Nut Powder Works - 2012(9) TMI 777 - A.P.

3. On the other hand Shri Himanshu P Shrimali, learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order. He placed reliance on the following judgments:-

(a) 2006 (193) ELT A143 (SC) - Interarch Building Products Limited vs. Commissioner

(b) 2018 (8) GSTL 47 (Mad) - Shoppers Stop Limited vs. Cc, (Exports), Chennai

(c) A/10597-10600/18 dated. 27.03.2018 - Rajdhani Travels vs. CST, Ahmedabad

(d) 2019 (22) GSTL 218 (Tri-Del) - ITC Limited vs. CST, Delhi

(e) 2005 (184) ELT 154 (Tri-Del) - Interarch Building Products P. Limited vs. CCE, Ghaziabad

(f) 2011 (22) STR 380 (Tri-Mum) - CCE, Nashik vs. Crompton Greaves Limited

(g) A/11459/2019 dated. 24.07.2019 - Varsha Plastics P. Limited vs. CC, Kandla

(h) 2012 (27) STR 41 (Tri-Ahmd) - A A Memon & Company vs. CCE, Ahmedabad

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the very issue involved in the present case is no longer res-integra as the same has been decided against the assessee in the following judgments:-

(a) CCE & ST, Rajkot vs. M/s. Eagle Corporation Pvt. Limited – 2018 (7) TMI 855 – CESTAT AHMEDABAD

(b) M/s. Rajdhani Travels & Others vs. Commissioner (Appeals) of Central Excise – 2018 (4) TMI 168 – CESTAT AHMEDABAD

In the identical set of facts and legal issue involved in the present case as well in the above cited decisions wherein it was held that refund of the appellant in the above cases is hit by unjust-enrichment.

5. Considering the above position, we are of the view that, since the appellant have paid service tax in the routine course and subsequently when the service tax was made exempted retrospectively, the incidence of service tax stood passed on. Therefore, the lower authorities have rightly credited the refund amount in the Consumer Welfare Fund.

6. In view of the above discussion, the impugned orders are sustainable and hence the same are upheld. The appeals are dismissed.

*(Pronounced in the open court on 27.04.2023)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**