CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH – COURT NO.III

Service Tax Appeal No.50311 of 2017 (DB)

[Arising out of Order-in-Original No.DLI-SVTAX-002-COM-028-16-17 dated 28.11.2026 passed by the Commissioner of Service Tax, Delhi-II]

M/s. International Travel House Pvt. Ltd. **Appellant**
T-2, Community Centre,
Sheikh Sarai, Phase-I,
New Delhi-110 017.

Versus

Commissioner of Service Tax, **Respondent**
New Delhi.

AND

Service Tax Appeal No.50556 of 2017
with ST/Cross/50403/2017 (DB)

[Arising out of Order-in-Original No.DLI-SVTAX-002-COM-028-16-17 dated 28.11.2026 passed by the Commissioner of Service Tax, Delhi-II]

Commissioner of Service Tax, **Appellant**
New Delhi.

Versus

M/s.International Travel House Pvt. Ltd. **Respondent**
T-2, Community Centre,
Sheikh Sarai, Phase-I,
New Delhi-110 017.

APPEARANCE:

Ms. Madhumita Singh, Advocate for the assessee.
Shri Rajeev Kapoor, Authorised Representative for the Department.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NOs.55341-55342/2024

DATE OF HEARING:16.01.2024
DATE OF DECISION:13.03.2024

BINU TAMTA:

1. Cross appeals have been filed by the appellant and also by the Revenue challenging the Order-in-Original No. DLI-SVTAX-002-COM-028-16-

17 dated 28.11.2026 passed by the Commissioner of Service Tax, Delhi-II**.** The appellant is aggrieved against the confirmation of demand of service tax by invoking the extended period of limitation for the period 2011–12 to 2015–16 and the revenue has filed the appeal challenging the order whereby the demand for the period 2010–2011 was dropped.

2. The appellant is a member of International Air Transport Association (IATA) and is registered with the Service Tax Delhi-II, for rendering the services of Air Travel Agent, Rail Travel Agent, Tour Operator under Section 65 of the Finance Act, 1994 (referred to as the Act). Prior to 01.04.2014, the appellant had separate registration for each of its branches throughout India and w.e.f. 01.04.2014 it is centrally registered at New Delhi.

3. That the appellant during the course of providing the services of 'Air Travel Agent' also renders certain services to its clients in the nature of planning travel itinerary of the clients, suggesting better flights and flight time options, preparing department wise travel related reports (MIS Reports) i.e., number of tickets booked, number of tickets cancelled etc. for the clients, escorting the client's representative upto the point of immigration at airport etc. The appellant charges 'management fees' for rendering these services which is separately reflected on the air travel bill raised on the client.

4. That the appellant had discharged the service tax liability under Rule 6(7) of the Rules i.e. the value of services on the basic/commissionable fare

5. That the appellant while seeking Centralized Registration in compliance of the Trade Notice no.07/ST/2012 dated 25th April, 2012 issued by the Delhi

Commissionerate mandating disclosure of all the SCN's, pending adjudication and appeals before various appellate forums, had disclosed all issues/SCN pending adjudication before various Adjudicating Authorities and pending appeals before various appellate forums pertaining to all its branches pan-India.

6. Show cause notice no.04/2016 and 05/2016 dated 13.04.2016 was issued by the Department for the period 2010-2014 and 2014-2015 respectively classifying the services rendered by the appellant under the category of "Business Support Services" and charging service tax amounting to Rs.2,97,58,677/- for the period 2010-2011 to 2013-2014 invoking the extended period of 5 years under Section 73(1) as the service provider had intentionally avoided the disclosure of the requisite details/documents while filing the Returns though they were under the statutory obligation of self-assessment to correctly assess their liability and pay the same within the time specified. The actions of the service providers amounts to suppression of material facts from the Department resulting in contravention of the various provisions of the Act with intent to evade payment of service tax. The show cause notice was adjudicated and on the issue of invocation of extended period of limitation, the Adjudicating Authority dropped the demand raised for the period 2010-2011 as the same being beyond the period of 5 years and confirmed the service tax liability for the period 2011-2012 to 2015-2016. Being aggrieved against the demand being dropped for the year 2010-2011, the Department has filed a separate appeal and the appellant has challenged the imposition of service tax by invoking the extended period of limitation as well as on merits.

7. Ms. Madhumita Singh, learned Counsel for the appellant raised preliminary objection that the entire demand under the show cause notice is barred by limitation as the show cause notices have been issued earlier in respect of the same issue and the Department was aware of similar facts under the proceedings. The appellant had filed online ST-3 Returns from time to time disclosing the value of the services and the rate on which the liability of service tax was discharged but no objection has been raised on them. Also, while seeking centralized registration the details of the show cause notice as well as pending litigation involving in all the branches throughout India was submitted with the jurisdictional authorities at New Delhi. She referred to the contents of the show cause notice issued in the present case referring to the earlier show cause notices and relied on the decision of the Hon'ble Supreme Court in **Nizam Sugar Factory Vs. Collector of Central Excise [2008 (9) STR 314 (SC)],** which has been followed in subsequent decisions. Learned Counsel also submitted that the Department is itself confused in classifying the said services under two different taxable categories involving two different assessees under the same Commissionerate and thus the Department is un-clear regarding the classification of service. Consequently, no allegation of suppression of facts with intent to evade tax is sustainable.

8. Shri Rajeev Kapoor, learned Authorised Representative for the Revenue reiterated the findings of the Adjudicating Authority and submitted that the extended period of limitation has been rightly invoked in the present case as it is a case of willful suppression with intent to evade payment of service tax. On the cross appeal filed by the Revenue, the learned Authorised Representative submitted that the demand for the period 01.10.2010 to 31.03.2011 was within 5 years as the relevant date for filing

periodical half-yearly return was 25.04.2011 and the show cause notice was issued on 13.04.2016 which is within 5 years.

9. Before going into the merits of the case, we would first deal with the issue of invocation of the extended period of limitation under Section 73(1) of the Finance Act, 1994. Learned Counsel for the appellant in the chronology of events have given the year-wise details of the show cause notices issued to them by the Chennai Commissionerate, which stand authenticated from the instant show cause notice, the relevant paras thereof are quoted below:-

> **"3.2** Whereas the assessee was issued show cause notice by the Additional Commissioner of Service Tax, Service Tax Commissionerate, MHU Complex (VI Floor), 692, Anna Salai, Nandanam, Chennai-600 035 for an amount of Rs.30,11,155/- for the period 2006-2007 to March, 2009 on the value of management fee collected under Business Support Services and for an amount of Rs.10,03,199/- for the said period against the service provided to SEZ.
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> **3.3** Whereas for subsequent period the details of show cause notices issued to the assessee from Chennai location are as under:-

S.No.	SCN No.	Date	Period Involved	Service Tax Involved (in Rs.)
1.	426/2010	03.08.2010	2006-2007 to 2008-2009	40,14,354/-
2.	529/2011	20.10.2011	2010-2011	7,45,196/-
3.	21/2013	26.02.2013	2011-12	7,69,554/-
4.	72/2014	12.05.2014	04/2012 to 06/2012	2,52,749/-
5.	211/2014	26.08.2014	07/2012 to 03/2013	6,43,526/-
6.	SOD No.12/2015-ST-I	12.02.2015	2013-2014	11,16,425/-

> **3.4** Whereas on perusal of Statement of Demand No.12/2015-ST-1 issued from Chennai it is evident that the issue left in question is non-payment of service tax on management fee under "Business Support Services".

10. From the fact that several show cause notices have been issued by the Department, it cannot be said that the Department is not aware of the allegations now being made in the instant show cause notice. The facts were in the knowledge of the Department. In fact, the learned Counsel for the appellant has referred to Order-in-Appeal No.278/2013 dated 19.07.2013, where the show cause notice dated 5.4.2010 was under challenge wherein the demand pertained to the period May, 2006 to September, 2008 for rendering the services towards arranging travel of clients covered under the "Business Support Services". The show cause notice was confirmed by the order-in-original dated 13.06.2011 by the Addl. Commissioner of Service Tax, Bangalore and on the same being challenged by the appellant, the Commissioner (Appeals) held the demand under the "Business Support Services" as unsustainable, observing that it is not the case of the Department that the assistance provided by them is used for the purpose of business or commerce referring to the Circular No.109/03/09 dated 23.03.2009 issued by the Board. In view of these facts, the issue of limitation is squarely covered by the decision of the Supreme Court in **Nizam Sugar Factory** (supra) where the Court held that the allegation of suppression of facts against the appellant cannot be sustained, when the first show cause notice was issued all the relevant facts were in the knowledge of the authorities. The Supreme Court had referred to its earlier decisions, particularly the case of **P & B Pharmaceuticals Pvt. Ltd. Vs. Collector – 2003 (153) ELT 14 (SC)**, where the view taken was that, "in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then on the same set of facts another show cause notice invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the Department".

11. We further find that the appellant is justified in saying that the Department is un-clear and confused in classifying the services, as in the present case, the services pertaining to planning the travel itinerary of the clients has been supposed to be classified under "Business Support Services", whereas in the case of **Modiline Travel Services Pvt. Ltd. Vs. Commissioner of Service Tax, New Delhi vide Order No.137/ST/DLH/2016-17** dated **28.11.2016,** the assessee was rendering Travel Agent Services to its clients including travel planning and itinerary management for domestic and international travel, however, the same were classified under the category of "Business Auxiliary Services" (BAS), which has been finally dropped by this Tribunal by **Final Order No.51666/2023 dated 20.12.2023**. Thus when the Department itself is unclear regarding the classification and taxability of the services, the allegation of suppression with intent to evade payment of service tax against the appellant is unsustainable. Learned Counsel has also relied on the decision of the Supreme Court in the case of **Commissioner Vs. United Shippers Ltd. – 2015 (39) STR 369 (SC),** holding that the allegation of suppression cannot be sustained and the extended period of limitation cannot be invoked where the Department is not clear and has been challenging their stand as to classification of the services rendered by the assessee.

12. We may now consider the reasons enumerated in the show cause notice for invoking the extended period of limitation. The issuance of show cause notices by Chennai Commissionerate was never revealed by the appellant to other jurisdictional officers. The factor of management fee was never reflected by the appellant in their ST-3 Returns filed with the

Department during the relevant period. These facts have come to the notice only on the receipt of the letter dated 4.8.2015 from Chennai Commissionerate and but for which this would not have come to light to the Service Tax Division, Delhi. The assessee was under statutory obligation of self-assessment to disclose the requisite details and pay the correct service tax amount and non-disclosure thereof amounts to suppression of material facts from the Department and therefore, the extended period of limitation of 5 years from the relevant date can be invoked under Section 73(1) of the Act.

13. That each of the grounds taken by the Department for invoking the extended period of limitation has been dealt with by a decision of this Tribunal in **M/s.G.D. Goenka Pvt. Ltd. – Final Order No.51088/2023 dated 21.08.2023,** where the Tribunal dealt with the reasons for invoking the extended period of limitation. One of the grounds that the appellant was operating under self-assessment and hence was under obligation to assess the service tax correctly and if it is not done, it amounts to suppression of facts with intent to evade the payment of tax was rejected for the reason that if some tax escapes assessment, Section 73 provides for a show cause notice to be issued within the normal period of limitation. Also that, this provision will be rendered otios if alleged incorrect self-assessment itself is held to establish willful suppression with intent to evade. The plea taken by the Revenue in the present case that the appellant had not disclosed about the 'management fee' in the ST-3 returns, we find that the observation of the Tribunal in the case of **G.D. Goenka Private Limited (supra)** with reference to non-disclosure of availing the cenvat credit was rejected for the reason that the appellant cannot be faulted for not disclosing anything which is not required to disclose and that the returns are filed online where it is not

possible to provide any details, which are not part of the returns and so long as the assessee files the returns in the format as per self-assessment, its obligation is discharged. Applying the same analogy, the allegation of the Department that the factor of 'management fee' was never reflected in the ST-3 returns needs to be rejected. The allegation of suppression of facts have been buttressed on the ground that by virtue of the audit of the accounts by the Central Excise Revenue Audit (CERA) of the Chennai location of the assesse it came to knowledge that they were charging the 'management fee' which is in addition to the price of the ticket. The said ground for invoking the extended period has also been considered in the case of **G.D. Goenka (supra)**, the relevant portion is quoted below:-

> **"20.** Thus, 'the central excise officer' has an obligation to make his best judgment if either the assessee fails to furnish the return or, having filed the return, fails to assess tax in accordance with the Act and Rules. To determine if the assessee had failed to correctly assess the service tax, the central excise officer has to scrutinize the returns. Thus, although all assessees self-assess tax, the responsibility of taking action if they do not assess and pay the tax correctly squarely rests on the central excise officer, i.e., the officer with whom the Returns are filed. For this purpose, the officer may require the assessee to produce accounts, documents and other evidence he may deem necessary. Thus, in the scheme of the Finance Act, 1994, the officer has been given wide powers to call for information and has been entrusted the responsibility of making the correct assessment as per his best judgment. If the officer fails to scrutinise the returns and make the best judgment assessment and some tax escapes assessment which is discovered after the normal period of limitation is over, the responsibility for such loss of Revenue rests squarely on the shoulders of the officer. It is incorrect to say that had the audit not been conducted, the allegedly ineligible CENVAT credit would not have come to light. It would have come to light if the central excise officer had discharged his responsibility under section 72.
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> **21**. This legal position that the primary responsibility for ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs7 in its Manual for Scrutiny of Service Tax Returns the relevant portion of which is as follows:
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> > **1.2.1A** The importance of scrutiny of returns was also highlighted by Dr. Kelkar in his report on Indirect Taxation8. The observation made in the

context of Central Excise but also found to be relevant to Service Tax is reproduced below:

> It is the view that assessment should be the primary function of the Central Excise Officers. Self-assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers.
>
> (emphasis supplied)

22. Therefore, to say that had the audit not been conducted, the incorrect availment of CENVAT credit would not have come to light is neither legally correct nor is it consistent with the CBEC's own instructions to its officers."

14. We would also like to quote the conclusion arrived at by the Tribunal in **G.D. Goenka (supra),** which is to the following effect:-

"a) The appellant assessee was required to file the ST 3 Returns which it did. Unless the Central Excise officer calls for documents, etc., it is not required to provide them or disclose anything else.

b) It is the responsibility of the Central Excise Officer with whom the Returns are filed to scrutinise them and if necessary, make the best judgment assessment under section 72 and issue SCN under Section 73 within the time limit. If the officer does not do so, and any tax escapes assessment, the responsibility for it rests on the officer.

c) Although the Central Excise Officer is empowered to scrutinise all the Returns, call for records and if necessary, make the best judgment assessment, if, as per the instructions of CBIC, the officer does not conduct a detailed scrutiny of same Returns and as a result is unable to discover any short payment of tax within the period of limitation, neither the assessee nor the officer is responsible for such loss of revenue. Such a loss of Revenue is the risk taken by the Board as a matter of policy.

d) Extended period of limitation cannot be invoked unless there is evidence of fraud or collusion or wilful misstatement or suppression of facts or violation of the provisions of Act or Rules with an intent.

e) Intentional and wilful suppression of facts cannot be presumed because (a) the appellant was operating under self-assessment or (b) because the appellant did not agree with the audit and claimed that CENVAT credit was

admissible; or (c) because the appellant did not seek any clarification from the Revenue; or (d) because the officer did not conduct a detailed scrutiny of the Returns and the availment of CENVAT credit which is alleged to be inadmissible and was discovered only during audit."

15. As the issue on limitation has already been answered by the decision of the Apex Court in **Nizam Sugar Factory** (supra) and also by the Tribunal in **M/s G. D. Goenka** (supra), there is no reason for us to differ from that view and following the same, we are of the considered opinion that the department cannot invoke the extended period of limitation and therefore the demand in so far as it falls beyond the normal period of limitation is unsustainable and is accordingly set aside.

16. We may now consider the issue on merits as some period in dispute under the second show cause notice falls within the normal period of limitation. The allegation in the show cause notices is that the appellant had not revealed the amount charged towards 'management fee' which are chargeable to service tax under the category of "Business Support Services" as defined under Section 65(104c) of the Act, the provisions of the same are quoted below :

"Section 65 (104c) "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation.-For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;"

17. The submissions of the appellant is that service tax cannot be charged on 'Management Fee' under the category of "business support services" as it pre-supposes existence of a business and activities related to the said business that are outsourced for operational efficiencies and financial liabilities. The learned Counsel distinguished that the customers of the appellant are not in the business of booking tickets, planning itinerary, escorting passengers up to immigration and making payment of management fees rather they are the actual travellers. Here the appellant in the course of providing the services of "Air Travel Agent" also renders certain services in the nature of planning the travel itinerary of the clients, suggesting better flights and flight time, options, preparing department-wise travel related reports. We find that said services have been considered by this Tribunal in the case of **M/s Modiline Travel Services Pvt. Ltd Vs. Commissioner of Service Tax, Delhi Final Order No. 51666/2023 dated 20.12.2023** referred to by the appellant wherein the appellant (therein) claimed that it renders travel agent services to its clients, which services include booking of air tickets, travel planning and itinerary management for domestic and international travel and show cause notice was issued proposing demand of service tax under the category of Business Auxiliary Services (BAS). The Tribunal observed that the services rendered by the appellant have already been taxed under "Air Travel Agency" service and so any consideration arising from the same transaction cannot be taxed under different category and therefore the demand was set aside.

18. We are of the view that the appellant merely facilitates and assist the individuals who are travelling on which no service tax is leviable for the simple reason that service tax is charged on the service provided. The services in question does not fall within the scope of "Business Support Service" and therefore no service tax is leviable under the said category.

19. The next submission of the appellant is that they have been discharging their service tax liability by opting to pay under the provisions of Rule 6(7) of the Service Tax Rules, 1994 which is fixed and therefore any consideration received over and above the taxable value of service prescribed under the rules cannot be subjected to service tax under different category. The fact that the appellant has been discharging service tax under Rule 6(7) implies that they are acting as "air travel agents" and hence no further liability arises. There is no doubt that the appellant is engaged in the travel agency business and has been charged service tax under "Air Travel Agent" service as defined in Section 65(4) read with section 65(105)(l) which reads as under: —

> **"Section 65(4) "Air Travel Agent"** means any person engaged in providing any service connected with the booking of passage for travel by air;
>
> **Section 65(105)(l) "taxable service"** means any [service provided or to be provided], --
> [to any person], by an air travel agent in relation to the booking of passage for travel by air;"

20. The definition of "Air Travel Agent" has been worded very broadly to include any service connected with the booking of passage for travel by air Therefore, any services rendered incidentally and connected with the air travel agent service cannot be covered under any other category of

services. The Larger Bench in **Kafila Hospitality and Travels Pvt Ltd.** had observed that the definition of "air travel agent" includes all services connected with or in relation to the booking of passage for travel by air. The miscellaneous services rendered by the appellant are also in furtherance of the travel agent service to its customers and hence cannot be classified under the "Business Support Service".

21. The learned Counsel has further argued that no reliance can be placed on the Board's Circular No.137/6/2011- ST dated 20.04.2011 as relied on by the Commissioner in the impugned order. We find force in the submissions of the learned Counsel that services have to be classified in terms of section 65A/66F of the Act. We find that the Larger Bench in the case of **Kafila Hospitality** (supra) also dealt with the similar contention where the two competing entries were ATA service and BAS and relying on the provisions of section 65A(2)(a) of the Act concluded that the classification of the service would fall under air travel agent services and not business auxiliary service. Applying the same principle, we are of the view that the services rendered by the appellant being in connection with the air travel agent service has to be classified therein and not under the "business support service" as claimed by the Revenue.

22. Since we have decided the issue on merits in favour of the appellant and also on the issue of extended period of limitation there is no need to go into the question of interest or penalty. The appeal filed by the Revenue on the plea that the demand for the period 2010-2011 is within the period of five years also does not survive in view of the issue decided on extended period of limitation and on merits.

23. In view of our discussion above, the impugned order needs to be set aside. The appeal filed by the assessee is accordingly allowed and the appeal along with cross appeal filed by the Revenue is dismissed.

[Order pronounced on 13th March, 2024]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.