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आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road, राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952-2441142 Email: cesappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / अपील संख्या Appeal / File No. V2/275 /RAJ/2016	मूल आदेश नं / O.T.O. No. 15/ST/2016	दिनांक / Date 22-Sep-16
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6352 & 6355 & n6 जुलाई

ख अपील आदेश संख्या (Order-in-Appeal No.):

**RAJ-EXCUS-000-APP-136-2017-18**

आदेश का दिनांक / Date of Order:	<b>05.12.2017</b>	जारी करने की तारीख / Date of issue:	<b>11.12.2017</b>
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अपील आयुक्त/ आयुक्त/ आयुक्त/ आयुक्त/ आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जमनाल / गणधधम) द्वारा उपरि उल्लिखित जारी मूल आदेश से सुविज्ञ /  
Arising out of above mentioned OTO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**  
M/s. Vinayaka Tours, Holiday Corporate Centre, Nutan Nagar Main Road, Rajkot-360004

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति विम्बन्धित तरीके से उपरोक्त अधिकारी / अधिकार के समक्ष अपील दाखल कर सकता है।  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क, एवं सेवाकर अधीनस्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत विम्बन्धित-एन जगह की जा सकती है।

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वकीलाना मजदुराका से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, एर. के. पुरम, नई दिल्ली, को की जाती चाहिए।  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद (i) में बताया गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामनी भवन अर्थात् अहमदाबाद, 3<sup>rd</sup> फ्लोर को की जानी चाहिए।  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bahamani Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अधीनस्थ न्यायाधिकरण के समक्ष अपील दस्तुन करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित फिल स्टे फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अठारह की सीमा और अठारह लाख जूनिया, एचए 5 लाख या उससे कम, 5 लाख एचए का 50 लाख एचए तक अथवा 50 लाख एचए से अधिक है तो कम से 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अग्रदान, संबंधित अधीनस्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्ववित्तक होर के बैंक द्वारा जारी चेक/डिमांड ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अग्रदान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनस्थ न्यायाधिकरण की शाखा स्थित है। अग्रदान आदेश (स्टे ऑर्डर) के लिए अग्रदान-एच के साथ 500/- एचए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अधीनस्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T. 5 में चार प्रतियों में की जा सकती है एवं उसके साथ आदेश के विम्बन्ध अपील की नवी हो, साथी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होने चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा अठारह की सीमा और अठारह लाख जूनिया, एचए 5 लाख या उससे कम, 5 लाख एचए का 50 लाख एचए तक अथवा 50 लाख एचए से अधिक है तो कम से 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अग्रदान, संबंधित अधीनस्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्ववित्तक होर के बैंक द्वारा जारी चेक/डिमांड ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अग्रदान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनस्थ न्यायाधिकरण की शाखा स्थित है। अग्रदान आदेश (स्टे ऑर्डर) के लिए अग्रदान-एच के साथ 500/- एचए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs 500/-

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अन्तर्गत दायें की गयीं अपील, सेवाकर विधिसूची, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकेंगी एवं उसके साथ अप्रयुक्त, केन्द्रीय उत्पाद शुल्क अथवा अप्रयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की जायेंगी एवं एक प्रति परामर्शदात्री (अपील) और अप्रयुक्त द्वारा अथवा अप्रयुक्त अथवा उपप्रयुक्त, केन्द्रीय उत्पाद शुल्क संसाधन, की अपील/न्यायाधिकरण को आर्षेदन दाने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।  
The appeal under sub-section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/न्यायाधिकरण (सेरटेट) के प्रति अपील/न्यायाधिकरण के अन्तर्गत में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अन्तर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अन्तर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील/न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर का 10 प्रतिशत (10%), जब मात्र एवं जुर्माना विकल्पित है, या जुर्माना, जब केवल जुर्माना विकल्पित है, का अग्रिम किया जाए, बशर्त कि इस धारा के अन्तर्गत जमा कि जाने वाली अपीलित देय एंति इस अर्थ पर अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अन्तर्गत 'साय क्रेडिट या शुल्क' में विषय वर्णित है।

- (i) धारा 11 डी के अन्तर्गत रकम
- (ii) सेरटेट जमा की गयी गयीं गलत एंति
- (iii) सेरटेट जमा विधिसूची के नियम 6 के अन्तर्गत देय रकम

- बशर्त कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के अन्तर्गत में पूर्व किसी अपील/न्यायाधिकरण के अन्तर्गत विचारणीय स्थिति में अपील को लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, 'Duty Demanded' shall include

- (i) amount determined under Section 11 D,
- (ii) amount of erroneous Central Credit taken,
- (iii) amount payable under Rule 6 of the Central Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन**  
**Revision application to Government of India.**  
इस आदेश की पुनरीक्षण वित्त विभाग निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्राधान्य प्राधान्य के अन्तर्गत अथवा अपील, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त विभाग, राजवट विभाग, चौथी मंजिल, जीवन्त दीप भवन, नया दिल्ली-110001, को किया जा सकता है।  
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA, 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.

(i) यदि मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह में या भंडारण में मात्र के परिवहन के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र के नुकसान के मामले में।  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे मात्र के विनिर्माण में प्रयुक्त सच्चे मात्र या भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है।  
In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को मात्र निर्यात किया गया है।  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty

(iv) समिन्धित उत्पाद के उत्पादन शुल्क के अन्तर्गत के लिए जो इच्छा के लिए अधिनियम एवं इसके विभिन्न प्राधान्यों के तहत मात्र की गई है और ऐसे आदेश जो अप्रयुक्त (अपील) के द्वारा किये अधिनियम (जं. 2), 1998 की धारा 109 के द्वारा नियम की गईं तरीक अथवा समारोधि पर या बंद में पारित किए गये हैं।  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) विधिसूची, 2001, के नियम 9 के अन्तर्गत निर्दिष्ट है, इस आदेश के संशोधन के 3 माह के अन्तर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदावाही के अर्थ के लिए पर TR-6 की प्रति संलग्न की जानी चाहिए।  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित विचारणीय शुल्क की अदावाही की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का अग्रिम किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का अग्रिम किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त धारा में किया जाना चाहिए। इस लक्ष्य के होने पर भी की विद्या पट्टी कार्य से बचने के लिए संशोधित अपील/न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।  
In case, if the order covers various numbers of order, in Original fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scripstonic work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) सहायक न्यायाधिकायक शुल्क अधिनियम, 1975, के अनुसूची I के अनुसार मूल आदेश एवं अन्तर्गत आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायाधिकरण शुल्क टिकट लगा होना चाहिए।  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule I in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/न्यायाधिकरण (कार्य विधि) विधिसूची, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले विधानों की ओर भी ध्यान अवश्य किया जाए है।  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपील/न्यायाधिकरण को अपील दर्जित करने से संबंधित व्यापक विस्तृत और नवीनतम प्राधान्यों के लिए, अपील/न्यायाधिकरण वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं।  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

**:: ORDER IN APPEAL ::**

M/s. Vinayaka Tours, Holiday Corporate Centre, Nutan Nagar Main Road, Rajkot (hereinafter referred to as 'the appellant') has filed the present appeal, against Order-In-Original No. 15/ST/2016 dated 22.09.2016 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Service Tax Division, Rajkot(hereinafter referred to as 'the lower adjudicating authority').

2. Briefly stated facts of the case are that search operation had been carried out on 07.01.2013 at business premises of the appellant, which revealed that the appellant had obtained Service Tax Registration No. AAJFV5149GSD001 w.e.f. 10.07.2012 and was engaged in arranging packaged tour to their customers within territory of Rajkot by obtaining franchisee of M/s. Bonton Tours Pvt. Ltd., Mumbai (hereinafter referred to as "Bonton") and for that they had entered into agreement dated 30.11.2011; that the appellant was also booking air tickets as per requirement of customer; that Bonton had raised invoices including services tax in name of the customer with copy to the appellant through e-mail, the appellant collected payment from the customers by preparing cash credit memo and not by giving invoices issued by Bonton; that the appellant had never issued invoices to their customers; that the appellant had collected total amount as per the invoice issued by Bonton in name of customer and deposited the same into account of Bonton; that the appellant was receiving 3% to 4% commission from Bonton; that the appellant started collecting extra amount from customers when they did not get commission from Bonton; that the extra amount differed from customer to customer; that the appellant had shown extra amount under the head "handling charges"; that the appellant did not pay service tax on this extra amount collected from customers. This caused issuance of SCN dated 16.05.2016 to the appellant for recovery of Rs. 3,16,892/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") under taxable category of "Business Auxiliary Services" along with interest thereon under Section 75 of the Act and penalties under Section 76, 77 and 78 of the Act. The said SCN was adjudicated vide the impugned order by the lower adjudicating authority, who confirmed demand of Rs. 3,16,892/- under Section 73(2) of the Finance Act, 1994 and appropriated Rs. 25,220/- paid by the appellant; recovery of interest under Section 75 of the Act; imposed penalty under Section 77(2) and 78 of the Act and dropped penalty under Section 76 of the Act.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal on the grounds as under:

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3.1 They have not provided any service related to Air Travel and hence they were not liable to pay service tax on taxable category of Air Travel Agent; that Bonton had provided services and issued invoice to the customers and collected service tax, the appellant collected the amount as per invoice including service tax from the customers on behalf of Bonton and deposited into account of Bonton; that Bonton was required to pay service tax in Government account and not the appellant.

3.2 The lower adjudicating authority has demanded service tax from the appellant considering services provided by the appellant to Bonton under Business Auxiliary Service, which is not correct. The appellant had not provided any BAS to Bonton and not charged any amount to Bonton and whatever amount has been charged by the appellant from the customer over and above value of services provided by Bonton was nothing but handling charges and/or profit of the appellant. No service tax can be charged on the same from the appellant. The appellant was required to incur some expenses for providing service to the customers of Bonton which was not being reimbursed by Bonton and hence amount charged by the appellant has no connection with the services provided by Bonton and cannot be considered as BAS provided to Bonton. The appellant has not earned commission income, the amount charged by the appellant over and above the amount charged by Bonton was not commission income.

3.3 The appellant is entitled for threshold limit of Rs. 10 lakhs as they were not using any brand name of Bonton because the appellant had not issued any invoices in the name of Bonton.

3.4 The appellant relied upon following case laws with reference to penalty not to be imposed on them:

- (i) Bright Security Services & Labour Contractor reported as 2012 (26) STR 342 (Tri. Bang.);
- (ii) R. Deivendran reported as 2009 (15) STR 256 (Tri. Chennai);
- (iii) Global Software Solutions (P) Ltd. reported as 2011 (24) STR 707 (Tri. Chennai);
- (iv) Tamil Nadu Housing Board reported as 1994 (74) ELT 9 (SC);
- (v) SVM Nett Project Solutions Pvt. Ltd. reported as 2010 (17) STR 298 (Tri. Bang.)

R. Deivendran

4. Personal hearing in the matter was attended by Shri Rushi Upadhyay, Chartered Accountant, who reiterated the grounds of appeal and also submitted a written submission dated 09.10.2017 and emphasized decision of CESTAT in the case of Greenwich Meridian Logistics (India) Pvt. Ltd.

4.1 The appellant vide submission dated 09.10.2017 has submitted that the



appellant had put forth argument before the lower adjudicating authority that whatever differential amount has been earned by the appellant i. e. difference between the amount collected from the customer and amount deposited to airlines for the ticketing is nothing but the profit of the appellant and the same cannot be liable to service tax under the category of "Business Auxiliary Services"; that revised calculation sheet of liability considering profit margin on which service tax is not required to be paid. The appellant relied upon case law of Greenwich Meridian Logistics (India) Pvt. Ltd. reported as 2016 (4) TMI 547 – CESTAT Mumbai.

### Findings:

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the written as well as oral submissions of the appellant. The issues to be decided in the present appeal are that (i) whether condonation of delay should be accepted; (ii) whether service tax on differential amount under name of handling charges collected by the appellant is payable by them or not.

6. The appellant filed the present appeal after 87 days of receipt of the impugned order along with application for condonation of delay on 20.12.2016 showing date of receipt of the impugned order as 24.09.2016 in Form ST-4. The appellate authority is empowered under Section 35 of the Central Excise Act, 1944 to condone delay of 30 days beyond normal period of filing appeal within 60 days on justified ground. The assessee has given reason of delay as non-availability of authorized person to take decision whether impugned order to be accepted or appeal to be filed or not vide affidavit on oath. I am, therefore, inclined to condone delay of 27 days in filing appeal and proceed to decide the appeal on merits.

7. I find that the appellant was providing services related to arrangement of packaged tour to customers after obtaining franchisee from Bonton through an agreement dated 30.11.2011. The appellant was forwarding requirements of customers related to packaged tours to Bonton and the rates were being fixed by Bonton and were being communicated to the customers through the appellant. The packaged tours were being offered by Bonton but the appellant was a link between Bonton and customers and the appellant was collecting amount over and above fixed by Bonton through invoices in name of Bonton; that this excess amount was being collected by the appellant as handling charges but they did not collect service tax on this amount being collected as handling charges. I find that the appellant had collected total amount as per the invoices issued by Bonton from the customers and deposited those amount into account of Bonton. I also find that the appellant had issued cash credit memo to the

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customers for collection of the amount charged by Bonton and was not giving the invoices issued by Bonton to the customers. Thus, the appellant provided their services to customers as well as Bonton and for this they received 3%-4% commission from Bonton as per Commission Disbursement Structure Agreement for bringing customers to Bonton for packaged tour. I further find that the appellant did not get amount in some cases from Bonton and hence the appellant started collecting extra amount over and above total value shown in the invoices issued by Bonton. I find that the appellant has collected extra amount over and above total value of invoices (issued by Bonton) from respective customers for providing services of arrangement of packaged tour and/or booking of tickets calling this extra amount as "handling charges".

7.1 All these facts establish that the appellant arranged packaged tour of Bonton to customers and promoted packaged tours of Bonton with whom they had franchisee agreement but collected extra amount from their customers directly.

7.2 It is a fact that the appellant had provided services of packaged tours to customers and promoted packaged tours of Bonton. I find that the nature of services provided by the appellant, it can be appropriately classifiable under taxable category of "Business Auxiliary Services", which defines under Section 65(19) as under:

- "19 "business auxiliary service" means any service in relation to—
- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
  - (ii) promotion or marketing of service provided by the client; or
  - (iii) any customer care service provided on behalf of the client; or
  - (iv) procurement of goods or services, which are inputs for the client; or

*Explanation – For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use of the client;*

- (v) production or processing of goods for, or on behalf of, the client; or
- (vi) provision of service on behalf of the client; or
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or

*development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods.*

*Explanation – For the removal of doubts, it is hereby declared that for the purposes of this clause, –*

*(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person –*

*(i) deals with goods or services or documents of title to such goods or services; or*

*(ii) collects payment of sale price of such goods or services; or*

*(iii) guarantees for collection or payment for such goods or services; or*

*(iv) Undertakes any activities relating to such sale or purchase of such goods or services;*

*(b) "excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944);*

*(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 199(1 of 1944);"*

(Emphasis supplied)

7.3 In view of the above facts, the service provided by the appellant can be appropriately classifiable under the taxable category of "Business Auxiliary Service" and the appellant is liable to pay service tax on income generated by way of collecting extra amount from their customers. The appellant relied upon case law of Greenwich Meridian Logistics (India) Pvt. Ltd. reported as 2016 (4) TMI 547 – CESTAT Mumbai whereas I find that facts of the said case law are different from the facts of the present appeal, as the said case is about commission received from shipping lines for purchase/sale of space/slots for ocean transport of containers.

8. The appellant argued that they are entitled for threshold exemption upto Rs. 10 lakhs as they did not use brand name of Bonton. I find that threshold exemption available, as per Notification No. 6/2005-ST dated 01.03.2005 as amended vide Notification No. 33/2012-ST dated 20.06.2012, stipulated that the service provider can avail exemption from service tax leviable on taxable services of aggregate value not exceeding limit of Rs. 10 lakhs, only if the service provider is not using brand name /

trade name of another person. I find that the appellant in this case had collected money from customers using name of Bonton and the invoices were issued by Bonton and given to the customers through the appellant only. This fact makes it very clear that the brand name of Bonton was used by the appellant for providing services and retaining amount for themselves. Therefore, I find that the appellant is not entitled for threshold exemption in this case.

9. In view of above, I uphold the impugned order and reject the appeal filed by the appellant.

९.१ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 The appeal filed by the appellant stands disposed off in above terms.

*(Handwritten Signature)*  
(कुमार संतोष)  
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Vinayaka Tours, Holiday Corporate Centre, Nutan Nagar Main Road, Rajkot	मे. विनायक टूरस, होलिडे कॉर्पोरेट सेंटर, नूतन नगर मेइन रोड, राजकोट.
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**Copy for information and necessary action to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
- 2) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise Division-I, Rajkot.
- 4) Guard File.