

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Service Tax Appeal No. 50819 of 2021**

(Arising out of Order-in-Original No. 05/2021-ST dated 18.03.2021 passed by the Additional Director General (Adjudication), New Delhi)

**Benzy Tours and Travels**

13, Swastik Chambers, LT Marg,  
Mustafirkharna, near Karnak Bridge  
Mumbai- 400001

**...Appellant**

VERSUS

**Additional Director General (Adjudication)**

West Block- VIII  
Wing-6, 2<sup>nd</sup> Floor,  
R.K. Puram, New Delhi

**...Respondent**

**APPEARANCE:**

Shri Manoj Chauhan, Chartered Accountant for the Appellant  
Shri Aejaz Ahmed, Authorized Representative of the Department

**CORAM :**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**  
**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing/Decision: 24.11.2025**

**FINAL ORDER NO. 51795/2025**

**JUSTICE DILIP GUPTA**

M/s Benzy Tours and Travels<sup>1</sup> has filed this appeal to assail the order dated 18.03.2021 passed by the Additional Director General (Adjudication)<sup>2</sup> confirming the demand of an amount of Rs. 7,40,44,131/- collected by the appellant as representing service tax from the sub-agents or customers of airlines during the period 2009-10 to 2013-14 under the provisions of section 73A(4) of the Finance Act, 1994<sup>3</sup> with interest.

2. The appellant is a travel agent accredited by the International Air Transport Association<sup>4</sup>. The appellant claims that it is engaged in

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- 1. the appellant**
  - 2. the adjudicating authority**
  - 3. The Finance Act**
  - 4. IATA**

the business of booking air tickets of various domestic and international airlines and that the appellant and IATA entered into an agreement titled as "Passenger Sales Agency Agreement" for sale of tickets of member airlines.

2. The appellant claims that as it had to discharge service tax on the commission received from the airlines under the category of "air travel agent services", it had the following two options available under section 68 of the Finance Act and the Service Tax Rules, 1994<sup>5</sup>:

(i) **Commission Model under section 68 of the**

**Finance Act**- Under this model, service tax is payable on the "gross amount charged" received by the travel agent at the rate prescribed in section 66/66B of the Finance Act, which excludes the airfare of the ticket, but includes any commission received from the airlines.

(ii) **Basic Fare Model under rule 6 (7) of the Service**

**Tax Rules**- Under this model, a travel agent has the option of discharging service tax equivalent to a specified percentage of the "basic fare" of the ticket.

3. The appellant claims that till 2011-12, most branches of the appellant followed the Basic Fare Model, but w.e.f. 01.04.2012 all the branches paid service tax under the Commission Model. In both the cases, the service tax component was paid by the appellant.

4. During the relevant period, the appellant was selling airline tickets to sub-agents, who further sold the tickets to their customers. The appellant contends that booking of a ticket of an airline in the travel industry can be done only by IATA recognized travel agents and

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5. **the Service Tax Rules**

so sub-agents who were not IATA accredited were required to purchase tickets for their customers only through IATA agents, and to this extent the appellant rendered "air travel agent" services to the sub-agents. The appellant also contends that since the sub-agents increased the business of the appellant, a certain amount of commission/incentive was paid by the appellant to the sub-agents.

5. Investigation was, however, started by the Delhi Zonal Unit of the Directorate General of Central Excise Intelligence and thereafter, a show cause notice dated 12.10.2015 was issued to the appellant alleging that the appellant was rendering services to airlines in lieu of which it received commission from the airlines; this commission formed full consideration for the services and was, therefore, inclusive of service tax, which was paid by the appellant after cum-tax calculation; the sub-agents were providing services to the appellant in relation to the booking of airline tickets in lieu of which the appellant paid consideration in the form of a discount to the sub-agents; however, despite being a service recipient, the appellant was wrongly collecting an amount representing service tax from the sub-agents but was not depositing it with the government exchequer. It is this amount of service tax collected from the sub-agents that was sought to be recovered from the appellant under section 73A(2) of the Finance Act with interest under section 73B of the Finance Act.

6. The appellant filed a detail reply to the show cause notice and pointed out that the appellant was not rendering any service to the airlines. In fact, air travel agent services were being provided by the appellant to the sub-agents and/or passengers, and the sub-agents were also providing services to their ultimate passengers and not to the appellant. The appellant, therefore, pointed out that it had

correctly collected service tax from the subjects and that the commission amount received by the appellant from the airlines did not and could not include the service tax element. The appellant placed the relevant agreements and contended that the demand could not have been proposed in the show cause notice.

7. The adjudicating authority, however, confirmed the demand by order dated 18.03.2018, which order has been assailed in this appeal.

8. Shri Manoj Chauhan, learned Chartered Accountant appearing for the appellant submitted that the issue involved in this appeal is covered by the decision of this Tribunal in **M/s Riya Travel & Tours (India) Pvt. Ltd. versus Additional Director General (Adjudication), New Delhi**<sup>6</sup> Learned consultant for the appellant also pointed out that this decision was subsequently followed by the Tribunal in **M/s Akbar Travels of India Pvt. Ltd. versus Additional Director General (Adjudication), New Delhi**<sup>7</sup>.

9. Shri Aejaz Ahmed, learned authorised representative appearing on behalf of the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

10. The submissions advanced by learned consultant for the appellant and learned authorised representative have been considered.

11. A perusal of the decision of this Tribunal rendered in **Riya Travels** does show that the issue involved in this appeal was considered by the Tribunal and it was held that the commission received by the appellant from the airlines was for the services provided by the appellant to the sub-agents or customers and the

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6. **Service Tax Appeal No. 52774 of 2018 decided on 28.09.2024**

7. **Service Tax Appeal No. 53095 of 2018 decided on 21.10.2024**

appellant had not provided any service to the airlines. The relevant observations are as follows:

**34.** It, therefore, follows that the commission that was received by the appellant from the airlines was for the services that the appellant was providing to the sub-agents or to the customers and not because the appellant rendered any service to the airlines. In fact, the commission received by the appellant had a direct nexus with the services rendered by the appellant to the sub-agents.

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**49.** Thus, what follows from the aforesaid discussion is that travel agent services have been rendered by the appellant to the sub-agents, and not to the airlines and once services are provided by the appellant to sub-agents, the sub-agents cannot be said to be providing any services to the appellant.

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**53.** The contention of the appellant is that it rendered services to the sub-agents and not to the member airlines of IATA and so the appellant was entitled to collect service tax from the sub-agents, who were the service recipients. The burden of tax is borne by the service recipient. Once it is established that the sub-agents are the recipient of services rendered by the appellant, there can be no illegality in recovering service tax from the sub-agents. Section 73A(2) of the Finance Act would, therefore, not be applicable.”

12. The Division Bench, thereafter, drew the following conclusion:

**54.** What follows from the aforesaid discussion is:

- (i) Such remuneration shall constitute full compensation for the services rendered to the carrier” occurring in clause 9 of the PSA Agreement does not mean that service tax is included in the remuneration;
- (ii) The commission received by the appellant from the airlines was for the services provided by the appellant to the sub-agents or the customers. The appellant did not provide any service to the airlines; and
- (iii) The appellant was justified in charging service tax from the sub-agents and this service tax had been deposited by the appellant with the government. Thus, the

provisions of section 73A(2) of the Finance Act would not be applicable.”

13. This decision of the Tribunal in **Riya Travels** was followed by the Tribunal in **Akbar Travels**.

14. In view of the aforesaid two decisions of the Tribunal in **Riya Travels** and **Akbar Travels**, it has to be held that adjudicating authority was not justified in confirming the demand. The order dated 18.03.2021 passed by the adjudicating authority is, accordingly, set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**

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