

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76112 of 2015

(Arising out of Order-in-Appeal No. 47/GHY/CE(A)/GHY/2015 dated 27.03.2015 passed by Commissioner of Customs & Central Excise (Appeals), Guwahati.)

M/s. Blue Hills Travels (India) Limited.

(Blue Hills Complex, H. P. Brahamachari Road,
Paltan Bazar, Guwahati-781008)

Appellant

VERSUS

Commr. of Customs, Central Excise & Service Tax, Guwahati

(Customs House, Nilmoni Phukan Path,
Christian Basti, Guwahati-781005)

Respondent

APPEARANCE :

Mr. Rakesh Dubey, Advocate for the Appellant

Mr. Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75525/2026

Date of Hearing : 24th March 2026

Date of Pronouncement : 20.04.2026

PER R. MURALIDHAR

The appellant is rendering Tour Operator Services with Service Tax Registration number AACCB2582KSB001. On the ground that they have provided the services under the category of Business Auxiliary Services during the year 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, a show cause notice came to be issued on 18.10.2013. It is alleged that the services of Business Auxiliary Service was rendered in respect of tourist buses, stage carriage buses and goods and luggage booking. After following due process and verifying the documentary details placed before him, the adjudicating authority dropped the proceedings holding that the appellant was rendering only Tour Operator Services and no service was being provided under the

Business Auxiliary Service category. Being aggrieved, the department filed an appeal before the Commissioner (Appeals). After hearing both the revenue and the respondent (present appellant), the Commissioner (Appeals), has set aside the impugned order and confirmed the demand of Rs. 18,14,889/-. He also imposed penalties and charged interest on the confirmed demand amount. Being aggrieved, the appellant is before the Tribunal.

2. The Ld Counsel appearing on behalf of the appellant submits that, undisputedly, the appellant is registered with the Central Excise Department and has taken Service Tax registration, and was paying Service Tax under Tour Operator Services. They were also filing ST-3 Returns regularly. He submits that the appellant had a profit-sharing mechanism with the parties. As per this mechanism, for tourist bus tickets sold, they retained a part of the amount received from users of the tourist bus services. The same arrangement existed for stage carriage bus services and goods and luggage booking services also. He submits that the persons using the tourist bus or stage carriage bus cannot be treated as clients of the appellant, since the tickets were sold to them and a part of the same was retained by the appellant. No Agreement was entered into between the appellant and the Tourist Operator / Stage Carriage operator to render any service on their behalf to their clients with the appellant getting 'commission' in return for such services. The Revenue also has not come out with any such evidence. Therefore, he submits that the adjudicating authority has rightly held that the services do not fall under Business Auxiliary Services. However, while deciding the Revenue's appeal, the Commissioner (Appeals) has gone beyond the scope of the show cause notice. He has held that with effect from 01.04.2012, all services would attract Service Tax except those covered under the Negative List under Section 66D or under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. The learned counsel submits that the period involved is 2008-09 to 2012-13. Even for 2012-13, separate demands were made under the heads tourist bus, stage carriage bus and goods/luggage booking, clearly showing that the

demand was specifically under Business Auxiliary Services. Hence, he submits that the decision of the Commissioner (Appeals) is legally not sustainable. In view of these submissions, he prays that the appeal may be allowed on merits.

3. He further submits that the show cause notice issued on 10.10.2013 is time-barred for most of the period in question. The appellant was registered and was regularly filing Returns. There is no dispute that they were paying Service Tax under Tour Operator Services. The Department has not produced any evidence that the appellant collected any commission from the so called clients. The appellant had a *bonafide* belief that their activities do not fall under Business Auxiliary Services. Hence, he submits that the extended period demand should be set aside on limitation also.

4. The learned AR reiterates the findings of the Commissioner (Appeals). He submits that the appellant was receiving commission from bus operators, stage carriage operators and for goods booking. Therefore he justifies the demand under Business Auxiliary Services.

5. We have considered the submissions and perused the records.

6. There is no dispute that the appellant was registered under Service Tax for Tour Operator Services. There is also no allegation that they failed to pay Service Tax under this category or failed to file ST-3 returns. Business Auxiliary Service falls under Section 65(19) of the Finance Act, 1994 and contains multiple sub-clauses. It is incumbent upon the Revenue to specify the clause under which the demand is being made. However, we find that no such specific clause has been invoked in the show cause notice. The Revenue has also not produced any evidence to show that bus operators or stage carriage operators were clients of the appellant.

7. On perusal of the Order-in-Original, we find that it is a well-reasoned and detailed order. The Adjudicating authority has gone through the documentary evidence placed before him and has arrived at this conclusion. On the other hand, we find from Para 12 of the Order in Appeal that Commissioner (Appeals) has gone beyond the scope of the show cause notice and relied upon changes effective from 01.07.2012.

8. We find that indeed the Commissioner (Appeals) has traversed beyond the scope of the SCN. First of all, the point that the services do not fall under Negative List [Section 66D], or under Mega Exemption given under Notification No.25/2012 ST dated 20.06.2012, was not raised at all in the Show Cause Notice. Even if it were to be raised, we do not find as to how the same could be applied for the period 2007-08, 2008-09, 2009-10 and 2010-11. At the most it would apply for the period 1.7.2012 to 31.03.2013. Hence, the Commissioner (Appeals) has erred in allowing the appeal filed by the Appeal by confirming the demand.

9. Considering the above facts, we set aside the impugned order on merits.

10. We also find merit in the arguments of the appellant on the time bar issue. The appellant was registered and was filing Returns regularly. Under the self-assessment regime, CBEC's manual mandates that scrutiny of the Returns is still required to be taken up by the Range officials for raising the required queries. There is nothing to suggest that any such scrutiny was taken up. The data used for quantifying the demand, has been derived from the books of accounts maintained by the appellant. Therefore, we hold that no case of suppression has been made out by the Revenue. We hold that that the confirmed demand for the extended period is legally not sustainable, and the same stands set aside on account of time bar.

11. Thus, the appeal stands allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on...20.04.2026)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

Pooja