IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26350 of 2013
and
M.P. No. 1 of 2013

M/s.Speed Birds (P) Ltd.
Rep. By its Director
No.105, Peters Road,
1st Floor, Royapettah Chennai - 600 014. ... Petitioner

Vs.

1. The Commissioner of Service Tax,
Division I, Newry Towers,
No.2054-I Block, II Avenue,
Anna Nagar,Chennai - 600 040.

2. The Assistant Commissioner of
Service Tax, Division -I
Central Excise,
Newry Towers, No.2054-I Block, II Avenue,
Anna Nagar,Chennai - 600 040. ... Respondents

Prayer: Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd respondent in the impugned proceedings passed in Original No.101/2012 dated 15.11.2012 and quash the same.

For Petitioner : M/s. Radhika

For Respondents: Mr. V. Sundareswaran
(CGSSC)

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O R D E R

The petitioner has challenged the impugned proceedings dated 15.11.2012 in Original No.101/2012 passed by the 2nd respondent.

2. By the impugned order, the 2nd respondent has confirmed the demand of Rs.48,581/- (Rupees Forty Eight Thousand Five Hundred and Eighty one Only) including Service

tax and Education Cess under Business Auxiliary Service provided by the petitioner for the period of 01.04.2010 to 31.03.2011 under Section 65(19)(ii) of the Finance Act, 1994.

3. It is the contention of the petitioner that there is no service provider and recipient relationship between the petitioner and M/s.Galileo / Amadeus India P Ltd. who developed Centralized Reservation System (CRS) softwares for booking of Air Tickets. The software was merely used by the petitioner for booking of air tickets developed by M/s.Galileo / Amadeus India P Ltd. For using the softwares, the petitioner was paid incentives by M/s.Galileo / Amadeus India P Ltd. which cannot be considered as provision of Business Auxiliary Service (BAS) within the meaning of the Finance Act, 1994.

4. Since the petitioner had alternative remedy before the Commissioner (Appeals), the present writ petition ought not to have been admitted. It should have been either dismissed at the initial stage or the petitioner should have been directed to file a statutory appeal.

5. The impugned order was passed on 15.11.2012 and therefore, the appeal ought to have been filed within a period of 2 months before the Commissioner (Appeals) in terms of Section 85(3)(a) of Finance Act, 1994 or with an application to condone the delay within a period of 30 days thereafter. The petitioner did not choose it. Instead, the petitioner has filed the present Writ Petition on 17, September, 2013. Since the Writ Petition has been filed beyond the limitation of period, it is liable to be dismissed.

6.Reasons stated by the petitioner for belatedly approaching the Court appears to be genuine. The petitioner may turn to file a statutory appeal before the Appellate Commissioner, within a period of 30 days from the date of receipt of copy of this order. In case, the petitioner files a statutory appeal within the stipulated time herein, the 2nd respondent shall consider the appeal and pass orders on merits in accordance with law.

7. The present writ petition is disposed with the above observations and directions. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

lbm

Copy to:

1.The Commissioner of Service Tax,
Division I, Newry Towers,
No.2054-I Block, II Avenue,
Anna Nagar,Chennai - 600 040.

2.The Assistant Commissioner of Service Tax,
Division -I Central Excise,
Newry Towers, No.2054-I Block, II Avenue,
Anna Nagar,Chennai - 600 040.

+1cc to Mr.V.Sundaraswaran, Advocate SR.4884
+1cc to Mr.K.Vaitheeswaran, Advocate SR.5025

W.P.No.26350 of 2013
and
M.P. No. 1 of 2013

PP(CO)
CB(05/03/2020)