CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60937 of 2019

[Arising out of Order-in-Original No. GST-GGM/COM/SM/60-61/2018-19 dated 31.12.2018 passed by the Commissioner of Central Goods and Service Tax, Gurugram]

Commissioner of Central Excise and Service Tax, Gurugram ……**Appellant**
Plot No. 36-37, Sector-32,
Gurugram, Haryana- 122001

VERSUS

M/s Tek Travels Pvt Ltd ……**Respondent**
728, Udyog Vihar, Phase V,
Gurugram, Haryana- 122016

APPEARANCE:

Shri Siddharth Jaiswal and Ms. Amita Gupta, Authorized Representatives for the Appellant

Ms. Krati Siingh and Ms. Jashanpreet Kaur, Advocates for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60346/2026

DATE OF HEARING: 16.02.2026
DATE OF DECISION: 14.05.2026

P. ANJANI KUMAR :

M/s Tek Travels Pvt Ltd, the respondent-assessee is an approved agent of International Air Ticketing Association (IATA) and are engaged in providing the services relating to booking online air tickets to their clients. The respondent-assessee has entered into an agreement with HDFC and American Express Banks; as per the agreement a commercial credit card was provided to the respondent-assessee and upon using such credit card for booking airline tickets, the respondent-assessee would get an

incentive/reward points which could be converted to cash incentives within a specified period. Revenue formed an opinion on conduct of an audit that the respondent-assessee is rendering a declared service to the banks and as such they are liable to pay service tax as applicable. Show Cause Notices dated 04.05.2017 and 21.03.2018, covering the period 2013-14 to 2017-18 (upto 30.06.2017), demanding a service tax of Rs. 8,03,00,687/-, along with interest and penalties, were issued to the appellants. Commissioner of Central GST, Gurgaon I vide impugned order dated 31.12.2018 decided both the show cause notices together and dropped the proceedings. The impugned order was reviewed by a committee of Chief Commissioners and accordingly the instant appeal was filed.

2. Shri Siddharth Jaiswal, Additional Commissioner and Ms. Amita Gupta, authorized representatives for the Revenue reiterate the grounds of appeal and submits that:

- As per Section 65B (44) "Service" means any activity carried out by a person for another for consideration and includes a declared service.
- The use of the commercial card issued by the bankers constitutes a performance of an activity; the assessee has agreed to do an act as envisaged in the clause (e) of Section 66(e); the adjudicating authority failed to appreciate this position.
- Adjudicating authority failed to appreciate that there exists a contractual obligation between the respondent-assessee and the banks for release of cash incentive.
- The adjudicating authority failed to appreciate that in the era of self assessment the respondent-assessee failed to disclose all material facts and pay

appropriate service tax and therefore, invited the provisions related to invocation of extended period.

3. Ms. Krati Singh assisted by Ms. Jashanpreet Kaur, learned counsels for the appellant submits that the review orders and grounds of appeal travel beyond the show cause notice by invoking Section 66 (E)(e) of the Finance Act, 1994, whereas the reason of such allegation in the show cause notice. Travelling beyond Show Cause Notice is not permissible in view of the following decisions:

- Capgemini Technology Service India Ltd., 2023 (11) TMI 306-CESTAT Mumbai
- M/s Navnirman Construction Company, 2025 (1) TMI 735- CESTAT New Delhi
- Way 2 Wealth Brokerks PVt Ltd. 2019 (5) TMI 1146-CESTAT Bangalore
- Surya Prakaas Foundry, 2018 (8) TMI 1575-CESTAT Chennai
- Shital International 2010 (259) ELT 165 (SC)

4. Learned Counsel further submits that the arrangement between the respondent-assessee and the banks does not constitute a declared service; the cash back incentives for not a consideration for any service; Section 66(E)(e) covers activities as per the agreement and if there is a consideration for such an activity; Circular No. 214/1/2023-ST dated 28.02.2023 clarifies the same. The appellant department wrongly construes that the letter dated 09.12.2023 issued by HDFC bank shows a contractual obligation; in fact the letter only indicates the percentage of cashback as per monthly usage of the credit card. She submits that in terms of Section 65 (B) the four elements required for levying service tax are (i) existence of a service provider (ii) existence of a service recipient (iii) existence of a service and (iv) existence of a consideration for such

service. She relies on Bhayana Builders Pvt Ltd and others, 2018 (2) TMI 1325 and submits that only an amount payable for taxable service can be called a consideration; in the instant case such condition cannot be met, the cash incentive cannot be held to be a consideration. She submits that if the construction by the revenue is accepted every person who is using a credit card can be considered as a service provider to the bankers and the same could lead to unintended chaos in the field of taxation.

5. Learned Counsel further submits that extended period cannot be invoked as the appellants have not suppressed anything and the proceedings were initiated only on conduct of an audit. Accordingly, penalties also cannot be imposed. She relies on the following:

- Indian Railway Catering and Tourism Corporation Ltd., 2025 (4) TMI 1334-CESTAT New Delhi
- Socomec India Pvt Ltd., 2025 (4) TMI 3- CESTAT Chandigarh
- BDS Decor and Prefab Pvt Ltd. 2026 (2) TMI 286-CESTAT Chandigarh
- Bridgeview Broadband Network Pvt Lt, 2025 (7) TMI 840- CESTAT Chandigarh
- City Cable Bathinda, 2016 (2) TMI 961 (P&H)

6. Heard both sides and perused the records of the case. We find that the appellant-revenue seeks to levy service tax on the cash incentives accruing to the respondent-assessee on usage of the commercial credit card, provided by the bankers, in the booking of online tickets. It is the revenue’s contention that the activity undertaken by the respondent-assessee amounts to a taxable service in terms of Section 65(E)(e). Whereas the respondent-assessee submits that there is no service involved and the

respondent-assessee is in no way advertising the bankers or doing any other act which could constitute a service. We find that the show-cause notice alleges that usage of HDFC commercial card by the respondent-assessee leads to promotion of the name of HDFC and that the more widely the said card is used the more promotion and publicity of the name HDFC occurs. We find that there is no basis on record of such an allegation. The agreements/the letters do not indicate any activity that is to be performed by the respondent-assessee in lieu of the cash incentive except using the card for making payment. We find that Learned Commissioner categorically finds as follows:

> 6.10 It is explicitly clear from the above definitions, explanations and clarifications that provider of credit card service is mainly either a banking company, a financial institution including non-banking financial company or any other person, issuing such card to a card holder. The card holder is the recipient of service from the aforesaid card issuing entities. He is not a provider of service If the logic that user of credit card is a service provider then, as per the show cause notice, then all the people, who use credit cards and receive cash incentive or cash payback based on volume of usage of the card, would become the service providers to the banks and would come under the tax net, which does not appear to be the intention of the legislature.
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> 6.11 I also observe that the perusal of the show cause notice shows that the only allegation against the Noticee is that by use of credit card, it is promoting the name of the HDFC Bank. However, as discussed in para 6.8 above, mere use of the credit card by the Noticee for payment to airlines does not ipso facto leads to promotion of either name or business of the Bank with airlines or any third party, as the airlines are not concerned with the name of the bank but only concerned with receiving payment for their services to the Noticee for the air tickets. The show

cause notice is also not providing any evidence or basis as to how such an activity can be considered as promotion or marketing of the name or business of the Bank. Rather, I find that there is nothing in the show cause notices based on which it can be averred in what way and which promotional activities the party has undertaken for Banks. Further, I find from the Agreement with the banks, as quoted in the show cause notice, that there is no contractual obligation of the Noticee to provide any other service to the bank for receipt of cash back. There is also no such allegation in the show cause notice. Thus, I find that the Noticee je not providing any service to the Bank for promoting or marketing their name or business by using such credit card.

6.12 Next issue to consider is that if the Noticee is providing any service, other than credit cards service or promotion/ marketing service to the Bank by using the credit card. I observe that the Noticee is merely a recipient of the credit card service from the bank and as a recipient of such service, the Noticee is using the credit card for their transaction with airlines for making payment to them. No element of any service is found to be involved in the said activity of the use of the credit card.

6.13 The Noticee is receiving certain amount as cash back from the credit card issuing bank for the usage of the credit card. It therefore needs to be examined that if they are not providing any service to the Bank, for what purpose they are receiving this payback from the Bank, and whether the said payback is consideration for provision of any service by the Noticee to the Bank In this regard, I observe that when merchants (like airlines in this case) accept payment via credit card, they are required to pay a percentage of the transaction amount as a fee to the credit card issuing bank. If the cardholder has a participating cash back rewards program, the credit card issuer simply shares some of the merchant fees with the consumer. The goal is to incentivize people to use their credit cards when making payments rather than cash, which earns them no rewards. The more a consumer uses

> a credit card, the more merchant fees the credit card issuing bank can earn. Additionally, credit card issuing bank makes money by charging from the credit card holders high interest rates on credit and late fees for balances that carry over from month to month. The more consumers use their credit cards, the more likely it becomes that they will miss a payment or carry a balance for which they will owe fees and interest.
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> 6.14 Thus, the fundamental principle underlying the cash back scheme of the banks is that because such programmes of cash back are incentives for consumers to use their credit cards in lieu of cash or debit cards, they generate increased merchant fees/service charges for the credit card issuing banks and may also cause some consumers to increase their debt, providing yet another source of revenue for the credit card issuing banks. It is thus obvious that cash back is a form of incentive given by the issuing bank to increase their business by motivating or inducing the credit card holders to make more payments using their credit cards. The said payment of payback incentive therefore cannot be considered as a consideration towards rendition of any 'service as defined under Section 65B(44) of the Finance Act, 1994on the part of the user of credit card.

7. We find that while using the commercial card issued by the bankers the respondent-assessee is but promoting their own business and not in any way the business of the bankers. We are in agreement with the finding of the Commissioner that no service is being rendered by the respondent-assessee. We find that CBIC Circular No. 214/1/2023-S.T. dated 28.02.2023 clarifies that:

> In view of above, it is clarified that the activities contemplated under section 66E(e), i.e. when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are the activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity. Field formations

> are advised that while taxability in each case shall depend on facts of the case, the guidelines discussed above and jurisprudence that has evolved over time, may be followed in determining whether service tax on an activity or transaction needs to be levied treating it as service by way of agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Contents of Circular No 178/10/2022-GST. dated 3rd August, 2022, may also be referred to in this regard.

8. We find that as submitted by the learned counsel for the respondent-assessee invocation of Rule 6(E)(e) has been done by the appellant-revenue for the first time in the grounds of appeal. This was not part of the show-cause notice which mainly alleged that the respondent-assessee is promoting the business of the bankers. We find that in many cases it was held that an order or grounds of appeal cannot traverse beyond the show-cause notice. We find that coordinate bench at Mumbai held in the case of Capegemini Technology Service India pvt ltd. (supra):

> On perusal of the case records, we find that the show-cause notice dated 20.07.2015 had proposed for denial of the refund benefit, holding that the appellants are an intermediary and as such, their case falls under Rule 9(c) ibid and as such, the services provided by them do not fall under the category of 'Export of Service' for the purpose of grant of the refund benefit. The original authority while adjudicating the show-cause notice dated 20.07.2015 had dropped the proposals made therein and had considered that the services provided by the appellant qualify as 'Export of Service' for the purpose of grant benefit of the refund provided under Rule 5 ibid read with Notification issued thereunder. However, on appeal filed against the said original order by the Revenue, the learned Pr. ADG has taken entirely a different view and accepted the appeal filed by the Revenue holding that the appellant should not be entitled for refund in terms of Rule 4 ibid.

> Hence, it is evident that the learned Pr. ADG has gone beyond the scope of show-cause notice. It is settled law that show-cause notice is the foundation on which the Department must build up its case and the Department cannot urge new grounds/points which were never raised in the show-cause notice. It is also settled by the Hon'ble Supreme Court that Review proceedings cannot go beyond the grounds taken in the show-cause notice, as held in the cases of **CCE, Nagpur Vs. Ballarpur Industries Ltd. - 2007 (215) ELT 489 (SC), Commissioner of Central Excise, Chandigarh Vs. Shital International 2010 (259) ELT 165 (SC) and CCE, Bhubaneswar-I Vs. Champdany Industries Ltd. - 2009 (241) ELT 481 (SC)** that the show-cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. Thus, Revenue cannot take a new ground at the appellate stage which was not canvassed in the show-cause notice issued by the Department. Further, the law is well settled in the case of **Bajaj Auto Ltd. Vs. Union of India - 2003 (151) 23 (Bom)** that the ground taken in appeal pursuant to appellate order cannot travel beyond the ground mentioned in the show-cause notice. In the circumstances of the present case, since the learned Commissioner (Appeals) has traveled beyond the scope of the show-cause notice and applied entirely the different rule for rejection of refund benefit in favour of the appellant, we are of the considered view that the impugned order cannot sustain for judicial scrutiny.

9. We also find that Hon’ble Supreme Court in the case of Bhayana Builders held that service tax payable only if the conditions mentioned there in are satisfied. Hon’ble Supreme Court held that:

> 12) On a reading of the above definition. it is clear that both prior and after amendment, the value on which service tax is payable has to satisfy the following ingredients:
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> a. Service tax is payable on the gross amount charged:- the words "gross amount" only refers to the entire contract value between the service

provider and the service recipient. The word "gross" is only meant to indicate that it is the total amount charged without deduction of any expenses. Merely by use of the word "gross" the Department does not get any jurisdiction to go beyond the contract value to arrive at the value of taxable services. Further, by the use of the word "charged", it is clear that the same refers to the amount billed by the service provider to the service receiver.

Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into the equation for determining the value on which service tax is payable.

b. The amount charged should be for "for such service provided": Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined"

13) A plain meaning of the expression 'the gross amount charged by the service provider for such service provided or to be provided by him' would lead to the obvious conclusion that the value of goods/material that is

provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' simply, because of the reason that no price is charged by the assessee/service provider from the service recipient in respect of such goods/materials. This further gets strengthened from the words 'for such service provided or to be provided' by the service provider/assessee. Again, obviously, in respect of the goods/materials supplied by the service recipient, no service is provided by the assessee/service provider. Explanation 3 to subsection (1) of Section 67 removes any doubt by clarifying that the gross amount charged for the taxable service shall include the amount received towards the taxable service before, during or after provision of such service, implying thereby that where no amount is charged that has not to be included in respect of such materials/goods which are supplied by the service recipient, naturally, no amount is received by the service provider/assessee. Though, sub-section (4) of Section 67 states that the value shall be determined in such manner as may be prescribed, however, it is subject to the provisions of sub-sections (1), (2) and (3). Moreover, no such manner is prescribed which includes the value of free goods/material supplied by the service recipient for determination of the gross value.

10. In view of the above, we do not find any merit in the appeal filed by the revenue. Accordingly, we dismiss the appeal.

(Order pronounced in the open court on 14.05.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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