

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

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 50004 OF 2020

[Arising out of the Order-in-Original No. 24/2019-ST dated 24/09/2019 passed by Additional Director General (Adjudication), New Delhi.]

M/s Lufthansa German Airlines,Appellant
(Deutsche Lufthansa AG, Germany)
2nd Floor, Asset No. 2, Pullman
Novotel, Commercial Tower,
Hospitality District, Near IGI Airport,
New Delhi – 110 037.

Versus

Additional Director General,Respondent
(Adjudication),
Directorate General of GST Intelligence,
New Delhi.

**AND
SERVICE TAX APPEAL NO. 50849 OF 2025**

[Arising out of the Order-in-Original No. 26/AK/Pr. COMM/CGST/DSC/2023-24 dated 29/08/2023 passed by Principal Commissioner of Central Goods & Service Tax, New Delhi – 110 066.]

M/s Lufthansa German Airlines,Appellant
(Deutsche Lufthansa AG, Germany)
2nd Floor, Asset No. 2, Pullman
Novotel, Commercial Tower,
Hospitality District, Near IGI Airport,
New Delhi – 110 037.

Versus

Principal Commissioner, CGST,Respondent
Delhi South,
New Delhi.

APPEARANCE:

Shri P.K. Sahu, Advocate – for the appellant.
Shri Rajeev Kapoor, Authorized Representative for the
Department.

CORAM:

**HON'BLE DR. MRS. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 51603-51604/2026

DATE OF HEARING : 18.08.2026
DATE OF DECISION: 13.10.2026

P.V. SUBBA RAO

M/s Lufthansa German Airlines¹ filed this appeal to assail the order dated 24.09.2019 passed by the Additional Director General (Adjudication), DG GST (Intelligence)² in which she decided the proposals made in the show cause notice dated 08.01.2018³ issued to the appellant.

2. The appellant is an airline and carries passengers by air. It sells air tickets to passengers and on this air transport service, the appellant has been paying service tax after availing applicable abatement. Sometimes, passengers cancel their air tickets or do not show up. In such cases, the appellant charges cancellation fee, refund fee, no show fee, etc. Treating these fees also as a consideration for the service rendered by the appellant, it paid service tax even on these penal charges.

3. DG, GSTI initiated investigation and came to the conclusion that the penal charges collected by the appellant from the passengers for cancellation or for not showing up was a separate service covered as a declared service under section 66E (e) of the Finance Act, 1994⁴. It was also felt that the appellant was required to pay service tax on the full amount of

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- 1. the appellant**
 - 2. impugned order**
 - 3. SCN**
 - 4. the Act**

these penal charges and NOT on the abated value. It was felt that the appellant had wrongly treated the penal charges as a part its international transport services and had only paid service tax on the abated value of the penal charges.

4. Accordingly, the SCN was issued proposing to recover service tax of Rs. 6,07,62,939/- on the value of the cancellation penalty collected by the appellant. The tax was proposed to be recovered invoking extended period of limitation under the proviso to section 78 (1) of the Act along with interest and penalties.

5. The appellant resisted the proposals, which were however partly confirmed in the impugned order. Demand of Rs. 5,07,87,202/- was confirmed and the demand of Rs. 99,75,737/- was dropped in the impugned order. There is no appeal by the Revenue against the portion of the demand which has been dropped. Penalty has also been imposed under section 78 and section 77 (1) on the appellant.

6. We have heard Shri P.K. Sahu, learned counsel for the appellant and Shri Rajeev Kapoor, learned authorized representative for the Revenue and perused the records.

7. We find that the position of the department is that the cancellation charges recovered by the appellant were not part

of the service of international passenger transport and would form a distinct service. According to the department, this service is a service of tolerating an Act under section 66E (e) of the Act. The position of the appellant before us is that if the cancellation fees do not qualify as part of the air travel service, it cannot be called as a service at all. The nature of the amount collected by the appellant from the passengers is by way of compensation from the passengers reneging on the commitment to fly in a particular flight on a particular date. This, according to the appellant, is in the nature of liquidated damages or compensation and was not in the nature of a separate contract.

8. Learned counsel for the appellant relied on the following decisions :-

- (a) **South Eastern Coalfields Ltd. versus Commr. of C. Ex. & S.T., Raipur⁵**
- (b) **Dy. G.M. (Finance), Bharat Heavy Electricals Ltd. versus Commissioner of Customs & Central Excise, Bhopal⁶**

9. Learned counsel further submits that the decision in both these judgments is that section 66E (e) of the Act can be invoked only if the purpose of the agreement itself is to tolerate an Act. It will not apply to a situation where the agreement is to do an Act and the compensation is charged for default by one of the parties. Learned counsel, therefore, prays

5. 2021 (55) G.S.T.L. 549 (Tri. – Del.)
6. (2023) 4 Centax 400 (Tri. – Del.)

that the entire demand deserves to be set aside. The impugned order may be set aside and the appeal may be allowed with consequential relief to the appellant.

10. Learned Authorized Representative for the Revenue, on the other hand, submits the dispute is not whether or not service tax has to be paid on the amount collected as compensation from the passengers by the appellant, but whether abatement available on the service of transport of passengers by air is also be available to the service tax to be paid on compensation. He submits that this compensation being a separate service by itself and being declared service in terms section 66E (e) of the Act, service tax had to be paid on the full amount of compensation collected by the appellant and not on the abated and value. He, therefore, submits that the impugned order is correct and proper and it may be upheld and the appeal may be dismissed. Learned Authorized Representative further submits that the passengers were already aware at the time of booking that a cancellation fees could be charged, if they cancelled their tickets. Therefore, it is an integral part of the agreement between the airlines and the passengers.

11. We have considered the submissions advanced by both sides and perused the records.

12. A contract is a legally enforceable agreement. An agreement is, as per the Indian Contract Act, a set of promise or promises which form consideration for each other. When one signifies to another his willingness to do or abstaining from doing something with the intent of obtaining the assent of the other thereto, it is an offer and when the assent is given, it becomes a promise. In this case, the promise by the airlines is to carry the passenger and the promise by the passenger is to pay the airlines the fare. These two form the consideration for each other. After an agreement is reached and one of the parties fails to complete its part of the deal, the other party would be affected and can sue the effecting party for damages which are called un-liquidated damages. Sometimes, the contract itself also decides as to how much should be paid for as damages in case of default. Such damages are called liquidated damages. Having a clause of liquidated damages is like having a pre-nuptial agreement before wedding. The intention of the couple of signing a pre-nup is not that they would divorce and one party gets an amount. The intention of the couple is to live happily together and the pre-nup is the only standby option in case the marriage fails. Similarly, the intention of the airlines and the passengers when buying the ticket is not to cancel it so that the airline can get some money. The intention is that the passenger would fly and the airline would carry the passenger to his destination. However, if the passenger cancels the ticket for any reason, the airlines

would suffer because it has to find another passenger at a short notice. The cancellation charges are intended to compensate the airline to some extent.

13. In short, the cancellation charges are in the form of a compensation for failure of a contract entered into that the passenger would fly and the airlines would carry him to his destination. It is not a consideration and there is no separate agreement with an intent that the passenger would default so that airline would get some compensation.

14. This is the precise analysis and decision of this Tribunal regarding the nature of compensation or liquidated damages in a contract decided in **South Eastern Coal Fields Ltd.** which was followed in several decisions ever since.

15. We find that in a Circular dated 28.02.2023 CBEC has also accepted this interpretation of the expressions "tolerating of an Act" with respect to GST.

16. In view of the above, we find that the demand of service tax on the cancellation fees collected by the appellant cannot be sustained. It will make no difference to this legal position even though the appellant had, wrongly paid service tax on the compensation received by it after availing some abatement. Once there is no charge of service tax at all, it is irrelevant

whether the appellant had taken abatement or not taken abatement.

17. In view of the above, the impugned order is set aside and the appeals are allowed with consequential relief to the appellant.

(Order pronounced in open court on 13/10/2026.)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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