CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 52780 OF 2014

(Arising out of Order-in-Original No. 6/AKM/CST/ADJ/2014 dated 03.02.2014 passed by the Commissioner, (Adjudication), Service Tax, Commissionerate, New Delhi)

Air India Ltd **.....Appellant**
(Earlier Known as Indian Airlines Ltd.)
Airline House, 113,
Gurudwara Rakabganj Road,
New Delhi

VERSUS

Commissioner (Adjudication) **.....Respondent**
Service Tax, New Delhi
IAEA House, 17-B, IP Estate,
MG Marg, New Delhi - 110002

APPEARANCE:

Shri B.L. Narasimhan, Ms. Shagun Arora and Shri Kunal Aggarwal, Advocates for the Appellant

Shri Ajay Jain, Special Counsel of the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 13.05.2025
Date of Decision: 23.06.2025

INTERIM ORDER NO. 02/2025

JUSTICE DILIP GUPTA:

The issue that arises for consideration is whether the services provided by "Computer Reservation System"[1] Companies to M/s. Air India Ltd.[2] (earlier known as Indian Airlines Ltd.) would be taxable on a reverse charge basis under the category of "online information and database access or

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1. **CRS**
2. **the appellant**

retrieval"[3] services defined under section 65 (75) of the Finance Act, 1994[4] and made taxable under section 65(105)(zh) of the Finance Act.

2. A Division Bench of the Tribunal, at the time of hearing of this appeal, noticed that there were two contrary sets of decisions of the Tribunal. In **United Telecom Limited** vs. **Commissioner of Service Tax, Bangalore**[5], the issue that arose for consideration was whether United Telecom was liable to pay service tax under OIDAR service. The Division Bench held that the ownership of data was relevant and since the data was generated by Andhra Pradesh Government and the same was used by different wings of the Government, United Telecom had not provided any data and so the demand of service tax was not justified.

3. However, in **British Airways** vs. **Commissioner of Central Excise (Adjudication), Delhi**[6], where the issue was whether OIDAR service was received by British Airways from foreign based CRS Companies and British Airways was liable to pay service tax under reverse charge mechanism, the Division Bench held that the services were covered by the definition of OIDAR. The same view was expressed by another Division Bench of the Tribunal in **Jet Airways (I) Ltd.** vs. **Commissioner of Service Tax, Mumbai**[7], wherein again the issue was relating to OIDAR service provided by CRS Companies situated abroad.

4. The Division Bench, while hearing this appeal, therefore, referred the following issue to a Larger Bench of the Tribunal:

> "Thus, there are two conflicting views of Division Benches of the Tribunal. It would, therefore, be appropriate to refer the matter to the President for constitution of a Larger Bench of

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3. OIDAR
4. the Finance Act
5. 2008 (8) TMI 191- CESTAT-Bangalore
6. 2013 (36) STR 598 (Tri.-Del.)
7. 2016 (44) STR 465 (Tri.-Mumbai)

> the Tribunal to decide whether the services provided by CRS Companies to the appellant can be subjected to levy of service tax under the OIDAR services and as to which of the two set of decisions of the Tribunal, namely, **United Telecom**, on the one hand, and **British Airways** and **Jet Airways**, on the other hand, lay down the correct law on this issue."

5. The appellant is engaged in the business of transportation of passengers and cargo by air both at the national and international level. In earlier times, booking of airline tickets was primarily a manual process, either in person at airline ticket offices or through travel agents. Travel agents were required to manually check flight schedules and fare information directly from airline correspondents in order to make reservations. The rapid growth in demand for air transportation services and emerging competitors in the airline industry saw the introduction of the CRS. Through the CRS, booking of air tickets became automated and streamlined. Airlines developed their internal reservations systems enabling the travel agents/customers to seamlessly book tickets over the internet (website) by providing them with information regarding schedules, fares and availability of seats. At this stage, the airlines were maintaining their own inventories. Further evolution saw the introduction of global networks, which allowed travel agencies to access and book flights of multiple airlines through a single system. Some of these global networks are (i) Abacus Distributions Systems Pte Limited, Singapore; (ii) Amadeus Marketing, SA Spain; and (iii) Galileo International Partnership USA. They shall collectively called as CRS Companies. The CRS Companies established an infrastructure, both hardware and software, which assimilated data from various airlines, including but not limited to flight segments,

schedules, fares and availability of seats. The infrastructure of the CRS Companies gave visibility to travel agents of flight schedules of various airlines on a single platform and assisted them in seamless booking of tickets. It was understood that this revolutionized method of online ticketing provided airlines with greater outreach and visibility to travel agents across the globe, thereby increasing the bookings of airlines and consequently, their business. It was for this reason that airlines, including the appellant, entered into arrangements with CRS Companies to use the infrastructure of the CRS Companies so that the travel agents across the world could book tickets with the appellant airlines.

6. The appellant has explained the working of the CRS Companies in the following manner:

(i) CRS Companies are provided access by the appellant to the public domain information/data of the appellant available on its online reservation system, namely, flight schedule, seat availability and fare schedule;

(ii) The CRS Companies convert this data in CRS format;

(iii) CRS Companies provide hardware connectivity infrastructure and software access to air travel agents;

(iv) CRS Companies provide access to information to the air travel agents;

(v) The air travel agents book the tickets through CRS;

(vi) The air travel agents update CRS as soon as booking/cancellation is done;

(vii) CRS Companies provide a report to the airlines detailing tickets booked/cancelled through their CRS;

(viii) The appellant pays fee to CRS Companies as per the agreed terms, usually on each booking; and

(ix) CRS Companies share fee with air travel agents for tickets booked using their CRS.

7. The Directorate General of Central Excise Intelligence[8] initiated an investigation against the appellant alleging non-payment of service tax on reverse charge basis on payment made by the appellant to CRS companies. The investigation culminated in the issuance of a show cause notice dated 22.04.2009, proposing levy of service tax for the period 01.10.2003 to 31.12.2008 under the category of OIDAR services by invoking the extended period of limitation. Penalties under sections 76, 77 and 78 of the Finance Act were also proposed against the appellant in the show cause notice.

8. This show cause notice was adjudicated upon by the Commissioner by order dated 03.02.2014 and the relevant portion of the order is reproduced below:

> "67. ******* I find from the above discussion that **the only requirement in this transaction is that the assessee's own network (computer system) should respond on real time basis with confirmation to the request made by the Travel Agents accessing the data relating to the assessee as available in the data processing centre of CRS companies.** To enable this, the travel agents, in turn, are provided with a computer system by the CRS companies with a suitable software and on-line connectivity with their own data processing centre which in turn, is connected with the computer system of the assessee. **The data processing centre of the CRS companies make available to the travel agents the database of the respective airlines, for ascertaining seat availability including other related process and thereafter enables booking of a seat on a particular flight of the airline. The assessee's computer network, in turn access and retrieve the data relating to booking of an air ticket by**

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8. the Director General

any travel agent from the data base of the CRS server on real time basis.

68. **For the above activities, the assessee has been paying consideration to the said CRS Companies for each booking made by the travel agents or by itself through its computer system since Oct 03 onwards in the instant case. It is clarified that service tax is liable to be paid on consideration paid for using CRS service by the assessee.** It is seen that the airline specific CRS software and the data processing centre maintained by CRS companies, is accessed and used by the assessee and the travel agents. Under this process, the assessee appears the ultimate beneficiary. **Therefore any payment made and services received in the hands of the assessee, in this regard, are taxable amount under the above said taxable service.** I also observe in view of the provisions of section 65(75) (zh) of the Act that it is not necessary that the data or information should be provided to a customer personally or that the computer network should be owned by the service provider/assessee/TAs as claimed by them. It is also not important as who is under the possession of related data or information. **The important thing involved in the instant case is the arrangements, the systems available for delivery of message, data and information.** In the instant case, I find that the element of intangible service is visible in the form of access or retrieval of the data or information whether owned or not by the service provider and receiver and where the computer network is the main vehicle for delivery of the subject service in question. I find that amendment till 18.04.06 and clarifications under circular are immaterial at present in the instant.

69. **I find that the provision of service to travel agents, as contended, is delivered only at the instance of the assessee by CRS companies through computer network which would amount to providing the service to the assessee as per stipulated terms of the**

> **agreement.** This is not a denying fact. The assessee below para A.15 (3) stated that service provided by the CRS companies is nothing but the additional facility or mechanism which facilitates the booking of its tickets. I find it on record that the access towards the computer system and the data by the travel agents is on the instruction, on behalf of and for the benefit of the assessee only. It is also clarified that the CRS companies are not getting the value of air tickets sold by travels agents/assessee but the sale-proceeds goes to assessee. **The CRS companies get their consideration for providing on line data in the form of the consideration based on** air ticket sale. The linkage of consideration with air ticket sale is only a method of calculating remuneration for the service of online data provision. **Therefore, the assessee has to pay service tax on the said value paid to the said CRS companies.**
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> 70. ******* **As such the offices of CRS companies are actually located outside India. Therefore, I find that the issue of leviability of service tax on such services received in India appears to be correctly covered under the provisions of Rule 2(1) (d) (iv) of the Service Tax Rules, 1994 read with Section 66A w.e.f. 18.04.06 only in the instant case.**"
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> **(emphasis supplied)**

9. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Ms. Shagun Arora and Shri Kunal Aggarwal made the following submissions:

(i) The CRS Companies did not provide any data or information to the appellant. The show cause notice as well as the impugned order have admitted at multiple occasions that it is the appellant who provided its data to the CRS Companies, which was processed by the CRS Companies. Thus, the information stored and accessed belongs to the appellant only. The services rendered by CRS Companies

are, therefore, not covered under OIDAR services. In support of this contention, learned counsel placed reliance upon a decision of the Tribunal in **United Telecom**, wherein it was held that the ownership of the data is very much relevant for deciding the taxability of OIDAR. Learned counsel also placed reliance on the decisions of the Tribunal in **State Bank of India** vs. **Commissioner of Service Tax-Mumbai-II** [9] ; **Commissioner of Service Tax-Mumbai-II** vs. **BASF India Ltd.**[10]; and **Nestle India Ltd.** vs. **CCE & ST, LTU, Delhi**[11];

(ii) Though, in **British Airways** and **Jet Airways**, the taxability of services provided by CRS Companies under the category of OIDAR services was upheld, but these decisions did not consider the ratio of the decisions of the Tribunal in **United Telecom** and **State Bank of India**. In **British Airways**, though the decision in **United Telecom** has been referred to but it was summarily distinguished without even considering the ratio of the law laid down in **United Telecom**. **Jet Airways** did not even consider **United Telecom** and **State Bank of India** on the ground that **British Airways** had decided this issue;

(iii) The appellant had contracted with the CRS Companies to enable seamless booking of its flight tickets through subscribed travel agents across the world and not to receive any data or information. The purpose of the agreements with the CRS Companies was to use their existing infrastructure and increase the visibility of the appellant in the air travel business, resultantly increasing the number of bookings. To

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9. 2015 (37) STR 340 (Tri.-Mumbai)
10. 2018 (5) TMI 916 (CESTAT-Mumbai)
11. 2018 (11) TMI 461 – CESTAT Chandigarh

substantiate this submission, learned counsel referred to various clauses of its agreement with Abacus Distribution Systems Pte Limited[12];

(iv) If the intention of the parties was the provision and receipt of data, then service itself would have ended once data / information was shared by the CRS Companies. It would have been immaterial as to whether the travel agents were successful in booking tickets of the appellant. However, the terms of the agreement indicate otherwise. The agreement is clear that consideration would be payable only subject to successful bookings. This clarifies the position that the purpose of the agreement was to ensure that the travel related information of the appellant could be transmitted over the CRS to enable the travel agents to seamlessly book tickets and the parties had not agreed to merely provide data to the travel agents on behalf of the airlines;

(v) The department has sought to establish a service provider-service recipient relationship between the appellant and CRS Companies by alleging that the CRS Companies are providing OIDAR services to the appellant. For the taxable entry of OIDAR service to be attracted, it is mandatory that the CRS Companies provide some information/data to the appellant for a stipulated consideration. This objective should also be apparent from the terms and conditions of the contract between the appellant and the CRS Companies. There is no dispute that the CRS Companies do not have any data of their own which can be provided. It is also undisputed that the CRS Companies invite data from the participating airlines, which is standardized over a common

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12. Abacus Distribution

platform. It is also a fact that the CRS Companies encourage the travel agents to use the infrastructure created by the CRS Companies for booking of tickets, in lieu of which the travel agents are incentivized by the CRS Companies;

(vi) Even if the understanding of the department is considered, and it is assumed that there is provision of some data from the CRS Companies to the appellant, then too such provision of data is only incidental to the primary purpose of the arrangement between the two parties, which is utility of the CRS infrastructure for achieving larger outreach to the travel agents. Once the ticket of the appellant is booked, the records of the appellant are updated on real time basis. This is because at the time of booking of a ticket, the seat in the flight of the appellant is assigned and this information is internally updated in the data base of the appellant. There is an automatic and direct decrement in the remaining seats in the flight of the appellant. Hence, what is perceived by the department as provision of data, pre-exists with the appellant. The appellant is not dependent on the CRS to be informed of the tickets which are booked with the airlines of the appellant;

(vii) If data/information belongs to the service recipient itself, the service provider cannot render OIDAR services in relation to such data/information;

(viii) The expression 'providing' data/information in respect of OIDAR services would mean to supply such data/information which was previously not available with the service recipient; and

(ix) Decisions of the Tribunal in **British Airways** and **Jet Airways** are not applicable to the present case and in any case do not lay down the correct law.

10. Shri Ajay Jain, learned special counsel appearing for the department, however, made the following submissions:

(i) The issue of taxability of services provided by CRS has been decided to be taxable under OIDAR services in **Jet Airways**;

(ii) The decision of the Tribunal in **United Telecom** is not applicable in the present case, as was clearly held by the Tribunal in **British Airways** and **Jet Airways**;

(iii) The terms and conditions of the contract that appellant has signed with the overseas service providers clearly establish the fact that the arrangement in the contract is for OIDAR service;

(iv) The appellant is liable to pay applicable service tax under reverse charge mechanism as per section 66A of the Finance Act and the Rules made thereunder; and

(v) The appellant is not correct in contending that if data/information belongs to the appellant, the CRS Companies cannot render OIDAR services in relation to such data/information.

11. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

12. The issue that arises for consideration is whether services provided by CRS Companies to the appellant would be taxable under the category of OIDAR services on a reverse charge basis.

13. The levy of service tax has been confirmed basis the finding that the appellant had received OIDAR services from foreign CRS Companies, which service would be subject to service tax on reverse charge basis.

14. The submission of the learned counsel for the appellant is that the appellant had contracted with the CRS Companies to enable seamless booking of its flight tickets through subscribed travel agents across the world and the contract was not to receive any data or information. In fact, according to the learned counsel for the appellant, the purpose of the agreements with the CRS Companies was to use their existing infrastructure and increase the visibility of the appellant in the air travel business so as to increase the number of bookings.

15. It would, therefore, be appropriate to refer to the relevant provisions governing the levy of service tax and the contractual arrangement between the parties.

16. Section 65(75) of the Finance Act defines OIDAR service. With effect from 18.04.2006 upto 15.05.2008, the definition provided:

> "**65(75)** - "on-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network"

17. With effect from 16.05.2008 upto 30.06.2012, section 65(75) of the Finance Act stood as follows:

> "**65(75)** - "on-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network"

18. Section 65(105)(zh) of the Finance Act makes OIDAR service taxable. From 18.04.2006 upto 15.05.2008, it stood as follows:

> "**65(105)(zh)** - Any service provided or to be provided to a customer, by any person, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner"

19. With effect from 16.05.2008 upto 30.06.2012, section 65(105)(zh) of the Finance Act stood as follows:

> "**65(105)(zh)** - Any service provided or to be provided to any person, by any person, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner"

20. Section 2(o) of the Information Technology Act, 2000[13] defines "data" to mean:

> "**2(o)** "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer"

21. Section 2(v) of the Information Technology Act defines "information" to mean:

> "**2(v)** - "information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche"

22. Section 2(r) of the Information Technology Act defines "electronic form" to mean:

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13. the Information Technology Act

> "**2(r)** - "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device"

23. Section 2(j) of the Information Technology Act defines "computer network" to mean:

> "**2(j)** – "computer network" means the interconnection of one or more computers through—
>
> (i) the use of satellite, microwave, terrestrial line or other communication media; and
>
> (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;"

24. To understand the arrangement between the parties, one such arrangement between Abacus Distribution, a CRS Company, and the appellant can be examined. The relevant clauses of the agreement are reproduced below:

> "This Agreement is made on the 21st day of DECEMBER, 1991 Between:
>
> **(I) ABACUS DISTRIBUTION SYSTEMS PTE LTD** a company incorporated in Singapore and whose registered office is at 111 Somerset Road, #05-06, PUB Building Singapore 0923 (hereinafter referred to as "Abacus") and
>
> **(II) INDIAN AIRLINES** a company incorporated in INDIA and whose registered office is at AIRLINES HOUSE, 113 GURUDWARA RAKAB GUNJ ROAD, NEW DELHI- 110001, INDIA (hereinafter referred to as "PARTICIPANT")
>
> WHEREAS:
>
> (1) Abacus is developing a fully computerized reservation system, to provide comprehensive information, reservations, ticketing,

communications, distribution and other travel-related functions on behalf of its airline shareholders and participating carriers.

(2) The Participant wishes to participate in the Abacus System and Abacus is willing to allow it to become a Participating Airline on the terms and conditions mentioned hereinafter

NOW THEREFORE, in consideration of the premises and the mutual obligations hereinafter set forth, Abacus and PARTICIPANT agree as follows:

DEFINITIONS

As used in this Agreement, the terms listed below shall be defined as follows:

...

Abacus System	means the CRS operated by Abacus

...

Booking	means a sale of a PARTICIPANT's product of services. Booking on the PARTICIPANT means a confirmed Passenger Segment created in the itinerary portion of the customer's PNR.

...

Participating Airline	means any airline corporation which has Contracted with Abacus for the distribution of its products and services through the Abacus System.

...

Service Provider	means a travel-related vendor, including Participating Airlines, who has signed an agreement with Abacus to distribute its products and services through the Abacus System.

Subscriber	means any travel agent, commercial account, government agency reservation office including ARO, or any other similar entity who has the capability to access into the Abacus System for travel related purposes, including but not limited to obtaining information, making reservations and issuing travel-related documents.

...

3. RESPONSIBILITY OF PARTICIPANT

A. PARTICIPANT will at its own cost provide reservations services through the Abacus System in the manner most useful to all Subscribers and at a level no less favourable than it provides to any other CRSs. Such services shall include schedules, availability, fares and associated procedural information and such other services as may be mutually agreed upon. PARTICIPANT will provide Abacus as expeditiously as possible with all revisions to its information pertaining to services provided to passengers, including interim schedule change data, fare data and fare quotations and revisions to such other information as may be included in the Abacus System.

B. While seats are available PARTICIPANT will offer up to a maximum of four (4) seats per transaction for sale by the Subscribers.

...

K. The PARTICIPANT shall allow the subscribers to place the PARTICIPANT's tickets automatically in each territory, where the PARTICIPANT is at any time, a member of any industry neutral ticketing scheme and in which Abacus is at any time, authorized to function as a "System Provider" or in such other comparable capacity as may be applicable.

L. PARTICIPANT shall not disallow the Subscribers to place the PARTICIPANT's tickets through the Abacus System, if such Subscribers are allowed to plate the PARTICIPANT's ticket through other means, manual or automated.

...

N. (i) Participant shall ensure that any CRS in its control provides to all its subscribers display and booking facilities for all services of Abacus Affiliates on a level equal to the level it provides to any other vendor of travel related products and services, subject to technical feasibility.

...

P. Subject to Clause 2 at the PARTICIPANT's option. Abacus will take all reasonable steps necessary to provide to Subscribers such Abacus services as per the option selected by the PARTICIPANT and so reflected in Schedule I.

...

U. Prior to the location of the Abacus Core in Singapore, the PARTICIPANT agrees to work with Abacus to establish the necessary communication like between the Participant System and the Abacus System such that interruption to the delivery or transmission of the Abacus product and services to the Subscribers will be minimized. Abacus will endeavor at a date no later than six (6) months prior to the commencement of activities to establish the link, provide detailed plans for the installation, testing and commissioning of the links.

4. RESPONSIBILITIES OF ABACUS

A. Subject to Clause 2, Abacus will provide the Abacus Service(s) selected by PARTICIPANT indicated in Schedule 1 hereof.

B. Abacus will indentify all transactions transmitted to PARTICIPANT which were booked by the Subscriber through a unique communications reference section of the standard AIRIMP message so as to facilitate sorting and subsequent processing of intercepted messages. Abacus will also include an identification code which uniquely identifies the individual Subscriber location from which the PNR originated.

C. Abacus will provide neutral flight availability display to all its Subscribers other than to the AROs of Abacus Affiliates.

...

H. Where the NMC provides the Subscribers with the Abacus Services through local network service. Abacus will use reasonable business

efforts to ensure that the functionalities available to the Subscribers within that territory shall be at a level as close as possible to the functionalities provided directly by the Abacus System.

5. CHARGES

A. PARTICIPANT shall pay Abacus for each Net Booking made through the Abacus System in accordance with the rates contained in Schedule 2 of this Agreement.

...

Schedule 1

ABACUS SERVICES

1) SELLING FACILITIES

...

1.2 PARTICIPANT will grant Subscribers the facility to sell seats on its flights using such features as opted by the PARTICIPANT in Clause 1 of Schedule 2.

...

ABACUS AIRLINE PARTICIPATION AGREEMENT

SCHEDULE 2

ABACUS CHARGES

PARTICIPANT shall pay a fee to Abacus for the specified services as indicated below:

1. Net Booking Fees (Please tick as appropriate)

___Option A (Schedule 1)	US$ 2.30 per passenger segment
___Option B (Schedule 1)	US$ 2.65 per passenger segment
___Option C (Schedule 1)	US$ 2.65 per passenger segment"

25. A perusal of the aforesaid clauses of the agreement would show that Abacus had developed its CRS to provide certain functionalities on behalf of the participating airlines. They include access to travel related information to travel agents and the facility to reserve airline tickets over the CRS itself. The CRS Companies, therefore, acted as facilitators in promoting the sales of

the tickets of the appellant by enabling the travel agents to be informed on real time basis of the availability of flights operated by the appellant. It cannot, therefore, be urged that the agreement with the CRS Companies was intended to be limited to the provision of data. The intention of the agreement was to achieve greater outreach and thereby increase the number of bookings of the appellant. In fact, the consideration clause of the agreement is dependent on the successful bookings made through the CRS. If the intention of the parties was the provision and receipt of data, then service itself would have ended once data/information were shared by the CRS Companies and it would not be material whether the travel agents were successful in booking tickets.

26. Learned counsel for the appellant contended that it is only the terms and conditions of the contract from which the intention of the parties can be gathered and they alone are relevant for determining levy of tax. To support this contention, learned counsel placed reliance upon the following decisions:

(a) **State of Gujarat (Commissioner of Sales Tax, Ahmedabad)** vs. **M/s. Variety Body Builders**[14];

(b) **Rashtriya Ispat Nigam Ltd.** vs. **M/s. Dewan Chand Ram Saran**[15];

(c) **Commissioner of Sales Tax, Maharashtra State, Bombay** vs. **Walchandnagar Industries**[16]; and

(d) **Infrastructure Leasing and Financial Services Ltd.** vs. **HDFC Bank Ltd. & anr.**[17].

27. The aforesaid decisions clearly hold that is only terms and conditions of the contract from which the intention of the parties can be gathered and only when such rights and liabilities have been identified can the provisions of

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14. (1976) 3 SCC 500
15. 2012 (26) S.T.R. 289 (S.C.)
16. 1984 (11) TMI 304 – Bombay High Court
17. 2023 (10) TMI 962 – Supreme Court

service tax be applied. It cannot, therefore, be doubted that the terms of the contract serve as the foundation for determining the nature of services that are rendered.

28. The case of the department is that the service provider-service recipient relationship is established between the appellant and the CRS Companies because the CRS Companies are providing OIDAR services to the appellant. According to the department, once the booking is made and the passenger details are fed into the system by the travel agent, the CRS Companies provide the appellant with access to such data.

29. For OIDAR services to be taxable, it is mandatory that the CRS Companies should provide some information/data to the appellant for a stipulated consideration and this should be apparent from the terms and conditions of the contract between the appellant and the CRS Companies. It is not in dispute that in the present case the CRS Companies do not have any data of their own which they can provide. In fact, it is the CRS Companies that invite data from the participating airlines, which is thereafter standardized by the CRS Companies over a common platform. It is also a fact that it is the CRS Companies which encourage the travel agents to use the infrastructure created by the CRS Companies for booking of tickets.

30. The issue, therefore, that would arise for consideration is as to what is that information or data which was contractually agreed to be provided by the CRS Companies. What transpires from the agreement is that entire data base of the CRS Companies has been created by accessing information from the appellant and other various airlines. The appellant only intended to use the infrastructure set up by the CRS Companies to facilitate a better booking mechanism for travel agents. The CRS Companies were only obliged to ensure that the information of the appellant could reach the travel agents on

real time basis. Thus, the transaction between the appellant and the CRS Companies cannot be treated as provision of OIDAR service by the CRS Companies to the appellant.

31. Once the ticket of the appellant is booked, the records of the appellant are also updated. There is an automatic and direct decrement in the remaining seats of the flights of the appellant. Thus, what is perceived by the department as provision of some data to the appellant, is a data which is already existing with the appellant. The appellant, in fact, is not dependent on the CRS Companies to be informed of the tickets which are booked with the airlines of the appellant. There is, therefore, no provision of any data to the appellant. The appellant had not associated with the CRS Companies for receiving such data/information, for the purpose of the agreement was to promote and increase the number of bookings by providing seamless interface by the travel agents and the consideration is dependent on the number of bookings. Consideration is not payable for the provision of data. It also needs to be noted that data pertaining to other airlines is not provided to the appellant.

32. In any view of the matter, even if it is assumed that there is provision of some data from the CRS Companies to the appellant, then too such provision of data is only incidental to the primary purpose of the contract between the two parties and cannot change the nature of the agreement. If the ultimate intent of the parties to a contract is to achieve a particular objective and for such achievement, a consideration has been decided and paid, then all other activities undertaken in the course of achieving that ultimate objective would be treated as ancillary and would not determine the nature of the transaction. It is the substance of the contract that will prevail

over incidental or ancillary activities to define the character of the transaction and consequent levy of service tax.

33. Learned counsel for the appellant also submitted that if data/information belongs to the service recipient itself, the service provider cannot render OIDAR service in relation to such data/information. Elaborating this submission, learned counsel pointed out that the expression "providing" data/information would mean to supply such data/information which was previously not available with the service recipient. What has, therefore, been submitted is that an important condition to be covered under OIDAR service is that data/information must be provided, and such provision can be for either access or retrieval or both, but if the data itself belongs to the service recipient then the activity of disseminating such data by the service provider to the service recipient cannot be equated with 'providing' of data. It has, therefore, been submitted that it is the ownership over such data or information intended to be provided which is paramount.

34. A perusal of the sections 65(75) and 65(105)(zh) of the Finance Act and the above quoted provisions of the Information and Technology Act would show that an activity can be classified under the category of OIDAR service if:

(i) It involves **providing** data or information;

(ii) Such data or information must be provided to any person;

(iii) Such data or information should be **accessible or retrievable or both**; and

(iv) Such data or information has to be provided in electronic form through computer network in any manner.

35. The word **providing** data/information used in section 65(75) of the Finance Act connotes "to give or provide something which is previously

available with the person who is providing and not available with the person who is receiving".

36. The meaning of the term "providing" in dictionaries is as follows:

Cambridge Dictionary	Providing: present participle of provide Provide: (verb): to give something to a person, company, or organization, or to make it available for them to use: to give someone something that they need.
Collins Dictionary	Provide Word forms: provides, providing, provided (3) Verb : If you provide something that someone needs or wants, or if you provide them with it, you give it to them or make it available to them.
Merriam-Webster Dictionary	provided; providing transitive verb a : to supply or make available (something wanted or needed)
Britannica Dictionary	provide verb provides; provided; providing a : to make (something) available : to supply (something that is wanted or needed)

37. Thus, "providing" necessarily means supplying or giving something to someone, which is needed or sought for. The phrase "to supply" has been defined in Strouds Judicial Dictionary, to mean, "pass anything from one who has it to those who want it".

38. It, therefore, follows that the expression "providing data/information" in the context of OIDAR service would mean to supply such data/information which was previously not available to the service recipient. Thus, what is of paramount is the ownership of such data/information intended to be provided. It cannot, therefore, be urged that foreign CRS Companies provided any data/information to the appellant.

39. It can be inferred from the above that that OIDAR service is rendered when there is provision of data or information from a database/ information base, for access/retrieval by the service recipient. For rendition OIDAR services, the service provider should be able to **provide** data/information for access or retrieval by the service recipient **only when such data/information belongs to the service provider**. In the present case, OIDAR services cannot be said to have been provided by the foreign CRS Companies as the data or information was owned by and belonged to the appellant.

40. The earlier decisions of the Tribunal on this issue, as a result of which reference has been made to a Larger Bench of the Tribunal, would now have to be considered.

41. In **United Telecom**, the appellant therein had entered into a contract with the Government of Andhra Pradesh to build, own and operate a Wide Area Network to provide data communication services to Andhra Pradesh Technology Services Limited. The issue that arose was whether the appellant was liable to pay service tax under OIDAR. The Division Bench held that the ownership of data was relevant and since the data was generated only by Andhra Pradesh Government and the same was used by different wings of the Government, the appellant had not provided any data. Thus, the demand of service tax was not justified.

42. In **State Bank of India**, the Tribunal examined the levy of service tax on reverse charge basis under the category of OIDAR services in respect of an arrangement between the State Bank of India and Equant, a foreign service provider, whereunder Equant provided a virtual private network enabling State Bank of India and its various branches to retrieve data from data center maintained abroad. The Tribunal set aside the demand by observing that since the ownership of data was with State Bank of India, it could not be said that Equant had provided any data or information.

43. In **PVR Ltd.** vs. **Commissioner of Service Tax, New Delhi**[18], the dispute was regarding the levy of service tax under the category of OIDAR services on the convenience fee charged by PVR on booking of movie tickets through their website. The Department sought to levy such tax by alleging that PVR had permitted the customers access to information on its website pertaining to movie timings and charges. The Tribunal observed that an OIDAR service arrangement would require **permission** to access or retrieve certain data/information. The arrangement between the OIDAR service provider and recipient should also be indicative of the legal obligations pertaining to such data/information such as copyright violations and replications. However, the online booking of movie tickets did not result in any such arrangement, it could not be said that PVR had rendered OIDAR services against collection of convenience charges and so the demand was set aside.

44. However, in **British Airways** where the issue was whether OIDAR service was received by British Airways from foreign based CRS Companies and British Airways was liable to pay service tax under reverse charge mechanism, the Division Bench held that the services were covered by the

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18. 2021 (55) GSTL 435 (Tri.-Del.)

definition of OIDAR. The appellant had relied upon the decision of the Tribunal in **United Telecom** to contend that it could not have received OIDAR services from the CRS Companies as the data provided belonged to the assessee itself but **British Airways** did not consider taxability under OIDAR services being dependent on ownership of data. The Member (Judicial) held that the decision of the Tribunal in **United Telecom** would not apply. However, the reasoning of the Member (Judicial) was not dependent on the application of the principle laid down **United Telecom**. It was merely held that **United Telecom** pertained to a forward charge levy, whereas **British Airways** involved a reverse charge levy. This could not have been made a ground to distinguish the decision. The relevant portion of the order of the Member (Judicial) is reproduced below:

> "**18. Appellant relied on the decision of the Tribunal in the case of United Telecom Ltd Vs. Commissioner of service Tax, Bangalore -2009 (14) STR 212 (Tri - Bang). In that case in Para 7 of the order, Tribunal found that United Telecom evolved wide Area Network (WAN) to make the communication between State headquarter and district head quarters possible. Such service was held to be telecommunication service. In the present case, appellant as a recipient of service has been brought to tax while in that case service provider was brought to tax. Both cases are on different footings. Therefore that decision is not profitable to the appellant.** Appellant further relied on the decision of Nestle India Ltd. V. CCE, New Delhi -2011 (22)STR 165 (Tri-Del). That was an interim order not laying down the ratio in appeal decision. Therefore that has no application by the very nature of the order which is liable to be varied or vacated."
>
> **(emphasis supplied)**

45. The Member (Technical), on the other hand, did not discuss the application of the decision of the Tribunal in **United Telecom** and merely held that the provisions of OIDAR services did not require that the data should belong to the service provider. The Third Member did not provide any independent finding as there was no dispute regarding classification under OIDAR services.

46. **Jet Airways** merely followed the decision rendered in **British Airways** without discussing **United Telecom**, which was specifically relied upon by the assessee.

47. It would, therefore, be seen that the decisions of the Tribunal in **British Airways** and **Jet Airways** have not examined that OIDAR services cannot be rendered when the data belongs to the service recipient. In **United Telecom** this precise issue was examined and it was held that since the data was generated by the Andhra Pradesh Government to be used by different wings of the Government and the appellant had not provided the data, OIDAR services cannot be said to have been rendered. This is also the view taken by the Tribunal in **State Bank of India** and **PVR**.

48. Even otherwise, with greatest of respect to the learned Members deciding **British Airways** and **Jet Airways**, it is not possible to subscribe to the view taken in these decisions.

49. The conclusion, therefore, that would inevitably follow is that the services provided by CRS Companies to the appellant would not be taxable under the category of OIDAR services and the decision of the Tribunal in **United Telecom** lays down the correct position of law.

50. The reference is, accordingly, answered in the following terms.

"The services provided by CRS Companies to the appellant would not be taxable under the category of OIDAR services and the decision of the Tribunal in **United Telecom** lays down the correct position of law."

51. The papers may now be placed before the Division Bench of the Tribunal for deciding the appeal on merits.

(Order Pronounced on **23.06.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BINU TAMTA)
MEMBER (JUDICIAL)

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

Shreya