

GIB/DL/AMADEUS INDIA/08.05.2019/HC-242**High Court Category :** PRE SCN CONSULTATION**State :** Delhi**Order No.:** GIB/DL/AMADEUS INDIA/08.05.2019/HC-242**Name of Entry :**
AMADEUS INDIA PVT. LTD.**Date :** 08-05-2019**Breif Issue :****FACTS AND ISSUE OF THE CASE:**

In this case the Petitioner provides computer data processing software, which is used by travel agents and ticket booking entities in the Airline industry. The question whether the services provided by the Petitioner is amenable to service tax engaged the attention of the Customs Excise Services Tax Appellate Tribunal („CESTAT“) Principal Bench in *Acquired Services Pvt. Ltd. v. Commissioner of Service Tax* (2014) 36 STR 1148 (TRI-10). The CESTAT held that the services provided by AIPL to overseas entities did not constitute either business auxiliary services or export of services. The said decision is stated to be pending in appeal before the Supreme Court of India.

The present writ petition by Amadeus India Pvt. Ltd.(AIPL) is in a narrow compass. The question that arises is whether prior to issuing the impugned show cause notice (SCN) dated 4 th September 2018, the Office of the Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate, Delhi South (the Respondent herein) ought to have held a pre-notice consultation with the Petitioner in terms of para 5.0 of „Master Circular? dated 10 th March, 2017 issued by the Central Board of Excise and Customs („CBEC?)?

Decision of Advance Ruling Authority :**DECISION:**

The officers of the Respondent do not appear to have taken any conscious decision in regard to the requirement of the Master Circular. A pointed question was posed by the Court to Mr.Harpreet Singh whether prior to issuing the impugned SCN, a decision was taken by the Respondent in the light of para 5.0 of the Master Circular not to undertake the pre-notice consultation. After going through the notes in file, Mr. Harpreet Singh stated that there was no noting in the file to that effect - In other words, it appears that the Respondent completely

ignored the Master Circular before proceeding to issue the impugned SCN.

The mandatory character of the Master Circular can be traced to Section 83 of the Finance Act, 1994 which makes Section 37 B of the Central Excise Act, 1944 applicable in relation to service tax. In terms Section 37 B of the Central Excise Act, 1944 instructions issued by the CBEC would be binding on the officers of the Department - In the present case, the Court is satisfied that it was necessary in terms of para 5.0 of the Master Circular for the Respondent to have engaged with the Petitioner in a pre SCN consultation, particularly, since in the considered view of the Court neither of the exceptions specified in para 5.0 were attracted in the present case.

Accordingly, without expressing any view on the merits of the case of either party in relation to the issues raised in the impugned SCN, the Court sets aside the impugned SCN dated 4th September, 2018 and relegates the parties to the stage prior to issuance of impugned SCN.

Petition allowed.