

[F. No. AERA/20010/Kale-Logistics/MIAL/C/CP-II/2016-17]

Airports Economic Regulatory Authority of India

Order No. 10/2016-17

**AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi - 110003**

**Date of Order: 10th August, 2016
Date of Issue: 26th September, 2016**

**Service: GMAX Services
Service provider: M/s Kale Logistics Solutions Private Limited.
Airport: CSI Airport, Mumbai**

In the matter of review and determination of GMAX EDI services rendered by M/s Kale Logistics Solutions Private Limited (Kale) at CSI Airport as aeronautical or non-aeronautical, with reference to the directions received from Airports Economic Regulatory Authority Appellate Tribunal (AERAAT) vide Order dated 25.04.2016 issued against Appeal No. 02 of 2016.

Brief Background of the case

(i) MIAL vide their letter of intent (LoI) dated 8th October, 2013, appointed M/s Kale Logistics Solutions Private Limited (Kale) as a concessionaire for developing, implementing, hosting and maintaining a web community portal called GMAX (GVK MIAL Air Xchange) which is an airport IT system providing an electronic platform for facilitating digital interactions between several entities operating at the airport viz. Importer/Exporter, Forwarders, CHAs, Carriers, Customs, GHAs etc.

(ii) Kale levied a charge of Rs.285/- plus taxes per transaction for providing GMAX services to the clients w.e.f 24.11.2014. The Bombay Customs House Agents Association (BCHAA) and The Air Cargo Agents Association of India (ACAAI) objected to the levy and filed complaints with AERA requesting for discontinuation of charges with immediate effect. Acting on the aforementioned complaints, AERA directed MIAL and Kale to stop the levy of transaction charge. Simultaneously, clarification on the issue was sought from the airport operator-MIAL and M/s Kale and after considering the material placed on record, the Authority decided to regulate GMAX services as it was related to Terminal Processing Services.

(iii) M/s Kale requested that in order to have necessary cash flow and to ensure continuation of services, Kale may be allowed to continue levy of charges for providing GMAX services at CSI Airport, Mumbai. The request of M/s Kale Logistics was considered by the Authority and it was permitted to resume levy of charges in respect of GMAX services on ad-hoc basis for the remaining period of the current control period and was further directed to file the MYTP/ATP for the 2nd control period for determination of tariffs.



(iv) However, Kale continued to protest the decision of AERA for considering the GMAX services as aeronautical under Terminal processing services and regulating the same. Subsequently, Kale filed an Appeal (No. 02 of 2016) before Hon'ble AERAAT against the decision of AERA for treating the GMAX services as aeronautical services. The Appeal was disposed off by Hon'ble AERAAT on 25.04.2016 with directions to M/s Kale to file MYTP/ATP for the 2nd control period. AERAAT also directed AERA to take a fresh decision, by a speaking order, on the issue as to whether the Appellant is providing aeronautical services at the Airport, after affording an adequate opportunity of hearing to the Appellant i.e Kale, before determining the tariff for the 2nd control period.

Details of the case

The detailed facts in the matter are chronologically given below:

1. The Bombay Customs House Agents Association (BCHAA) had vide their letter dated 24.11.2014 requested the Authority to direct MIAL not to introduce a charge proposed to be levied by Kale Logistics for GMAX Services at CSI Airport, Mumbai. In the meanwhile, Authority received another representation from Air Cargo Agents Association of India (ACAAI) on the charges (Rs. 285/- + tax per transaction) proposed to be levied by M/s Kale w.e.f. 24.11.2014. ACAAI stated that it is incumbent upon the Owner/ Custodian to improve the system at Mumbai Airport for the users, and not for itself. ACAAI contended that GMAX is only helping MIAL to maintain data for their benefit and it does not help the exporters or agents in any way. ACAAI sought clarification from this Authority i.e AERA, inter-alia, as to whether MIAL has been given permission by AERA to appoint a concessionaire for this software and to levy charges.

2. On receipt of the representations, in the first instance, a factual report was sought from MIAL. MIAL vide letter No. MIAL/CFO/872 dated 23.12.2014 furnished its factual report giving details as follows:

- (i) GMAX is an optional value added IT system, initiated for convenience of the trade members;
- (ii) it is not an aeronautical service and charges being levied are purely non-aeronautical in nature and therefore such user charges cannot be subject to regulation;
- (iii) the background of the subject, its features, need, benefits &
- (iv) Specifically responded to the allegations made by BCHAA.

Further, MIAL also submitted that various presentations and workshops have been held with the trade before introducing the new IT system, the services of which were offered free of cost, for a trial period since April 2014 to November 2014. MIAL stated that the system proposed by KALE is optional and Trade Members who do not want to be part of this initiative are free not to use the system and they can continue to work in non-automated manner without paying any charges. MIAL also stated that it is not providing any service and it is to receive only the concession fee as revenue from KALE, and that such concession fee is not part of any aeronautical services defined in the AERA Act, 2008, which needs to be regulated.

3. After considering the representations of BCHAA and ACCAI and the factual reports of MIAL, the Authority decided that GMAX services being provided by M/s KALE Logistics for the cargo trade at CSI Airport is an aeronautical service. The charges being levied presently by M/s KALE Logistics without prior approval of Authority to be stopped with immediate effect and the Service Provider may be advised to file their Multi Year Tariff Proposal and Annual Tariff Proposals to the Authority after going through



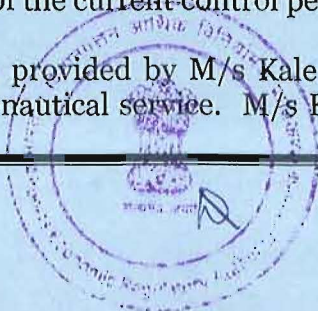
user consultation process as per the Guidelines issued by the Authority. Accordingly, vide letters dated 08.04.2015 and 27.04.2015, MIAL and Kale were informed of the above decision of the Authority. It was confirmed by MIAL vide its letter dated 27.04.2015 that Kale Logistics Solutions Private Ltd. discontinued levy of charges with effect from 16th April 2015, without stopping the GMAX Service.

4. Subsequently, M/s Kale Logistics, vide letter dated 07.08.2015 inter-alia indicated the following to Authority:

- (i) While Kale was not agreeable to the Authority's decision, they suspended collection of charges for GMAX services voluntarily with expectation that the Authority would realize the true nature of GMAX services and recall its directions under letter dated 08.04.2015.
- (ii) GMAX services is being provided uninterruptedly without collecting any charges.
- (iii) The Brihanmumbai Custom House Agents Association (BCHAA), which is the original complainant, also wrote to the Authority whereby they have clarified their earlier reservations about the GMAX services and have not only supported this initiative but have also conveyed that the nominal fees for GMAX services is reasonable. Other trade members have also similarly supported the GMAX services.
- (iv) Despite their best efforts and repeated representation, Authority has not appreciated the concerns raised by them and no explanation has been given as to why only this particular EDI service has been proposed to be an aeronautical charge while such similar EDI services provided at the airport are considered non-aeronautical.
- (v) Continued suspension of GMAX charges is causing great financial hardship affecting cash flow.
- (vi) Has expressed constraint to continue providing the service on non-chargeable basis till AERA evaluates whether such similar services at all major airports in India are in fact aeronautical or not.

The Authority was therefore requested to allow continuation of charges for providing GMAX services at CSI Airport, Mumbai, in order to have necessary cash flow to ensure continuation of services and also regard GMAX charges as non-aeronautical as is the case with all other similar service charges. The above mentioned request of M/s Kale Logistics was considered by the Authority and the resumption of levy of charges in respect of GMAX services was accepted on ad-hoc basis for the remaining period of the current control period and decision conveyed to M/s Kale Logistics vide letter dated 27.08.2015. Further, the Authority vide Order No. 35/2015-16 dated 22.09.2015 directed as follows:

- (i) M/s Kale Logistics is permitted to resume levy of charges in respect of GMAX services which was earlier ordered to be stopped by the Authority vide letter dated 08.04.2015. The levy is permitted with immediate effect on ad-hoc basis for the remaining period of the current control period (viz. upto 31.03.2016).
- (ii) The GMAX service being provided by M/s Kale Logistics is related to terminal processing and is an aeronautical service. M/s Kale Logistics should submit the



Multi Year Tariff Proposal (MYTP) and Annual Tariff Proposal (ATP) after undertaking user consultation as per the CGF Guidelines 2011.

5. The Authority vide letter dated 28.01.2016, informed the concerned ISPs that the 2nd Control Period shall commence from 1st April 2016 and the cut-off date for submission of the MYTP is 01.03.2016 (except for DIAL & MIAL). The Independent Service Providers/Airport Operators were informed that they are required to submit to the Authority for its consideration a Multi Year Tariff Proposal in the form and manner as specified in the Guidelines and the Annual Tariff Proposal for 2016-17 would also require to be submitted along with the MYTP for the Authority's consideration. The Authority further, vide aforesaid letter, inter-alia categorically informed the stakeholders that the approval of Authority to continue with the existing tariffs till the new tariffs are in place, shall only be granted in respect of the ISPs/Airport Operators who have submitted their tariff proposals for 2nd Control Period within the cut off dates. The tariffs of service providers, who do not submit their proposals by cut-off date, shall cease to exist. Accordingly, it was decided that M/s Kale Logistics should submit the MYTP and ATP after undertaking user consultation as per the CGF Guidelines, 2011 as the Authority had earlier decided that the GMAX services being provided by Kale is related to terminal processing and is an aeronautical service.

6. Kale Logistics had been repeatedly approaching the Authority for a decision in respect of whether the GMAX service provided by them at CSIA is 'aeronautical' or 'non-aeronautical'. In the absence of a decision, Kale Logistics did not submit MYTP till 31.03.2016. Subsequently, Kale Logistics vide letter dated 30.03.2016 has requested for allowing continuation of charges beyond 31.03.2016 in respect of GMAX services at CSI Airport, Mumbai primarily on account of the following reasons:

(i) The trade including Brihan-Mumbai Customs House Agents Association (BCHAA) and Air Cargo Agents Association of India (ACAAI) have withdrawn their objections and accepted that the GMAX initiative is useful for them despite paying more than the current charges.

(ii) Regulating the charges of Kale Logistics only leaving other IT/EDI services out of regulation would land Kale in a disadvantageous position.

(iii) Though Kale continue to dispute the classification of their services as aeronautical, the current frame work of MYTP filing is not amenable to IT services at an airport. Hence MYTP filing for IT services in existing frame work is a very complicated exercise.

7. Further, Kale also requested the Authority to allow continuation of existing charges/filing of tariff proposal till 30.09.2016. However, the Authority vide Order No. 3/2016-17 dated 08.04.2016 ordered as follows:

(i) The GMAX service being provided by Kale Logistics is related to terminal processing and is an aeronautical service. Kale Logistics should submit the Multi Year Tariff Proposal (MYTP) and Annual Tariff Proposal (ATP) after undertaking user consultation as per the CGF Guidelines 2011 within 21 days from the date of issue of the order.



(ii) Kale Logistics is allowed to continue levy of existing charges beyond 31.03.2016 upto 30.04.2016;

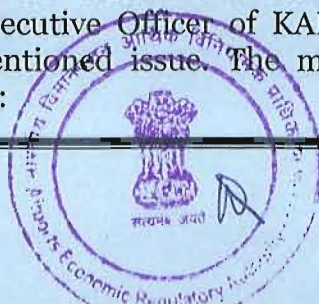
(iii) In case Kale Logistics fails to submit the tariff proposal by the extended time line, their tariff will cease to exist at the above mentioned airport w.e.f 01.05.2016.

(iv) The Airport Operator may also ensure compliance of the Order in respect of GMAX service being provided by Kale Logistics.

8. Kale filed an Appeal (No. 02 of 2016) in the Airports Economic Regulatory Authority Appellate Tribunal (AERAAT), New Delhi, against AERA's Order No. 3/2016-17 dated 08.04.2016 contesting that the GMAX service rendered by Kale are not 'aeronautical services' as defined under AERA Act, 2008 and thus are not under the ambit of regulation by AERA. The Hon'ble AERAAT disposed off the Appeal on 25.04.2016 by passing the following Order:

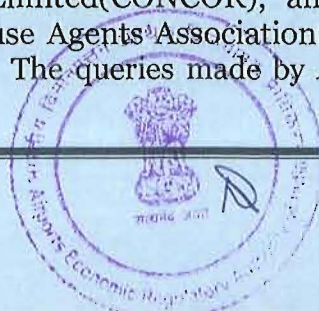
- (i) The Appellant (KALE) shall submit the requisite MYTP and ATP, as sought for, in the impugned order, within two weeks from today, without prejudice to its stand that it is not providing any aeronautical services at the airport;
- (ii) Before fixing the Multi Year Tariff for the 2nd control period, AERA shall take a fresh decision, by a speaking order, on the issue as to whether the Appellant is providing aeronautical services at the Airport, after affording an adequate opportunity of hearing to the Appellant;
- (iii) As stated by learned counsel appearing for AERA, on instructions, for the 2nd control period the tariff shall be fixed by 30th September, 2016;
- (iv) The Appellant may continue to levy the existing charges till AERA issues the Tariff Order for the 2nd control period (w.e.f. 01.04.2016)
- (v) 80% of the amount, so collected, shall be deposited in an independent account to be opened by the Appellant and shall not be used or withdrawn till the Tariff Order is issued; and,
- (vi) The amount deposited in the said account shall abide by the final order to be passed by AERA on MYTP and ATP, subject matter of the impugned order.

9. Kale submitted the MYTP for the second control period within the timelines given in para (i) of the aforementioned AERAAT Order dated 25.04.2016. Further, In pursuance of para 2 of AERAAT Order, the Authority, before passing a speaking order on the treatment of GMAX Service gave a hearing to M/s Kale Logistics Solutions Private Limited (KALE) at 1100 hrs on Tuesday, the 12th July, 2016 to discuss and understand the nature of GMAX services provided by KALE at CSI Airport as to whether they are 'aeronautical' services or 'non-aeronautical' services. Sh. Amar More, Chief Executive Officer of KALE gave a presentation before the Authority on the aforementioned issue. The main points highlighted during the presentation are as follows:



- (i) GMAX service is just an Electronic Data Interchange (EDI) or IT initiative for facilitating digital interactions between CONCOR and cargo handlers that operate at the cargo terminal. It is a value added optional service provided to any customer who wish to avail GMAX services. It is not a service provided under section 2(a) of the AERA Act. It is not a part of any cargo handling activity or cargo terminal processing activity. In fact, Cargo Handling as an activity can be carried out on standalone basis without using this system which clearly proves that GMAX has nothing to do with either cargo handling or terminal processing activity at the Airport. There are various stakeholders who don't use GMAX and are still able to get the cargo cleared as the usage of GMAX initiative is purely optional. It is simply an e-portal offering a number of value added services to the cargo agents while also helping them to achieve paperless transactions and reduce their related costs.
- (ii) The cargo terminal handling services at the Mumbai Airport is being carried out by M/s Concor Air Ltd. (CONCOR), M/s Cargo Service Centre and M/s Air India. Kale does not provide any cargo services or any services for cargo facility at the Mumbai Airport. It is merely providing some I.T. services to the cargo handlers for cargo documentation and tracking of the movement of the shipments. It is pertinent to note that GMAX can be accessed from even remote locations and can be utilized with its full capabilities. The entire server and software involved in provisioning of GMAX services is neither at the Airport nor at the cargo facility of the Mumbai Airport. No manpower is deployed by Kale at the CSI airport. GMAX services are being provided by Kale electronically and none of its representatives are present at the Airport.
- (iii) Cargo can be processed and is still being processed from Mumbai Airport without using the GMAX system. Hence GMAX is not an integral part of any "Terminal Processing" service, and hence cannot be termed as an Aeronautical Service. GMAX has features for processing ocean cargo shipments as well which has nothing to do with air cargo. Hence it is not correct to treat this IT service as Aeronautical Service. Several competitors exist for GMAX providing similar EDI services. Only regulating GMAX although it is not an aeronautical service puts Kale in a disadvantageous position vis-a-vis competition and will also hamper future IT innovations in the industry.
- (iv) Shri Amar More, CEO, KALE vide his email dated 27/07/2016 also made a submission that as per Operation, Management & Development Agreement (OMDA), the cargo handling is a non-aeronautical activity at Delhi & Mumbai Airports. Further, Sh. More has also forwarded copy of the circular dated 23.11.2014 wherein KALE has clarified that those freight forwarders who do not want to use the GMAX facility, may continue using the existing manual process for processing of cargo at the cargo terminal.

10. Before the Authority decides on treatment of GMAX service as aeronautical or otherwise, clarifications on the GMAX services were sought from the cargo service provider- M/s Concor Air Limited(CONCOR), and the cargo trade bodies viz. BrihanMumbai Customs House Agents Association(BCHAA) and Air Cargo Agents Association of India (ACAAI): The queries made by AERA and clarifications received through email are as follows:



(i) Concor Air Limited (CONCOR):

Query-1: Whether CONCOR depends on GMAX EDI Service for processing of cargo at the CONCOR terminal.

Reply: This is to confirm that processing of Cargo at the Concor cargo terminal at CSIA, Mumbai does not depend on GMAX EDI Service. Cargo is accepted and processed at the CONCOR cargo terminal at CSIA, Mumbai without GMAX also. The trade members (CHA/Freight Forwarders) who do not want to use GMAX, can bring the cargo to terminal and after presenting the Advanced Shipment Information, Stamped Carting Order and paying the Terminal Storage and Processing charges at the TSP counter; can collect the vehicle tokens and gate passes to bring the cargo inside the cargo complex. Many trade members who do not want to avail the online facility, follow this process for cargo tendering. In the whole process mentioned above they don't have to use GMAX. GMAX is just an online optional tool for facilitating stakeholder interactions.

Query-2: Whether GMAX /EDI services rendered by KALE are being used for processing of cargo (viz. activities related to receipt of cargo at terminal, xray, customs clearance, palletization etc.) at CONCOR terminal at CSI Airport, Mumbai.

Reply: With reference to your query this is to confirm that all cargo handling activities mentioned in your email are automated through our in-house custodian management software system i.e. Galaxy.

(ii) Air Cargo Agents Association of India (ACAAI)

Query-1: Nature of services being provided by Kale at CONCOR Terminal.

Reply: Kale Logistics Solutions Pvt. Ltd. has provided a digital platform for facilitation of interaction between the various stakeholders at the CONCOR terminal. This platform is an optional alternative to the traditional paper based manual process which also still continues.

Query-2 : Whether processing of cargo at Concor Terminal by CHAs/Freight Forwarders etc. is also carried out through GMAX portal. In other words please clarify whether various stages of cargo processing activities like terminal processing, X-ray screening, Customs clearance, Palletization etc. involve the use of GMAX EDI portal inside the Concor Terminal.

Reply: To the best of our knowledge, the GMAX portal facilitates interaction between various stakeholders as mentioned above, whereas the processing of cargo is carried out in CONCOR's in-house operational system.

(iii) BrihanMumbai Customs House Agents Association(BCHAA)

Query-1: Nature of services being provided by Kale at CONCOR Terminal.

Reply: GMAX is facilitating Electronic Information to exchange the data between Trade and Custodians.



Query-2 : Whether processing of cargo at Concor Terminal by CHAs/Freight Forwarders etc. is also carried out through GMAX portal. In other words please clarify whether various stages of cargo processing activities like terminal processing, X-ray screening, Customs clearance, Palletization etc. involve the use of GMAX EDI portal inside the Concor Terminal.

Reply: GMAX is not involved in any of the processing of the activities mentioned in the above question. The data provided by user on GMAX system is an exchange platform which operates as an interface for the custodians.

DELIBERATION BY THE AUTHORITY

11. The Authority in its 163rd meeting held on 10.08.2016 considered the issue of nature of GMAX Service, as being 'aeronautical' or 'non-aeronautical', so as to decide the same by way of a speaking order as per the directions received from AERAAT. After careful consideration of the submissions made by KALE during the presentation before the Authority and in view of the clarifications received from CONCOR, BCHAA and ACAAI, the Authority is of the view that GMAX is an EDI-IT service portal provided by KALE for digital interaction between various cargo handlers to promote their business. M/s KALE has access to the systems of Cargo operator, customs, Municipality etc. through an IT interface through which the users of GMAX can do the cargo documentation work online and also get real time data regarding the movement of their cargo shipments inside the cargo terminal. Further, GMAX is not used by the cargo operator viz. CONCOR for processing of any cargo handling activity inside the cargo terminal, which is being done by an independent automated system called GALAXY.

ORDER

The Authority, in exercise of powers conferred by Section 13(1)(a) of the Airports Economic Regulatory Authority of India Act, 2008, and the facts and clarifications placed on record before the Authority, decides and orders that :

the GMAX Service rendered by M/s Kale Logistics Solutions Pvt. Ltd. is merely a EDI interface enabling the users to process cargo documentation and/or track movement of cargo shipments. As the GMAX service does not involve any terminal processing of cargo inside the cargo terminal, the service is "non-aeronautical" in nature and does not fall under the ambit of AERA regulation.

OBSERVATION BY THE AUTHORITY

However, the Authority has also observed that the disturbing aspect of the transaction is the nexus between the service provider-M/s Kale Logistics Solutions Private Limited and the airport operator-M/s Mumbai International Airport Limited(MIAL), whereby 80% of the revenue thus collected through charges by M/s Kale is given to MIAL as royalty. This inherently implies that the cost of providing this service is even less than 20% of the amount of Rs.285+service tax per transaction charged by M/s Kale at present. The burden of such a huge royalty is ultimately being borne by the users and is costing them excessively. MIAL is also owner of the service, and it seems to have abused its power to get an abnormal return of 80% from the Concessionaire. Hence, it is felt by the Authority that M/s Kale and



MIAL should come forward to substantially reduce the charges in the interest of the cargo handling community at CSI Airport, Mumbai.

**By the Order of and in the
Name of the Authority**


**(Puja Jindal)
Secretary**

To,

**Kale Logistics Solutions Private Limited,
12th Floor, MBC Info Tech Park,
Near Hyper City,
Kasarvadavali Ghodbunder Road,
Thane, Mumbai – 400 615.
(Through: Shri Amar More, Chief Executive Officer)**

Copy to:-

- 1. Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, New Delhi – 110003**
- 2. Shri R.K. Jain, Chief Executive Officer, Mumbai International Airport (P) Limited, Chhatrapati Shivaji International Airport, First Floor, Terminal 1B, Santacruz (E), Mumbai 400 009.**

भा.वि.आ.वि.प्रा.
AERA

