Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 263 of 2012-DB

ST/Stay/10094/2023

(Arising out of OIA-CS/198/DMN/VALSAD/2011-12 dated 03/02/2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-DAMAN)

Akshar Travels ....**Appellant**
B-Haji Market,
Off New Collector Office, Jalaram Bapa Road,
Valsad, Gujarat

VERSUS

C.C.E. & S.T.-Daman ......**Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat - 396191

APPEARANCE:
Shri. Sudhanshu Bissa, Advocate for the Appellant
Shri P.Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 11704 /2023

DATE OF HEARING: 28.04.2023
DATE OF DECISION: 17.08.2023

RAMESH NAIR

The brief facts of the case are that the appellant has provided buses for transportation of the school children during the period 01.06.07 to March 2008 relevant to the present demand to the school owned and managed by M/S J.K Paper Limited. For the said transportation the appellant has collected the rent on monthly basis. The case of the department is that the appellant has provided rent-a-cab service accordingly the amount received from the service recipient is liable to service tax under rent- a-cab service.

2. Shri Sudhanshu Bissa, Learned Counsel appearing on behalf of the appellant had provided the bus service to the school children for Transportation from their home to school and from school to home , the motor vehicles rented for use by an educational body imparting skills or

knowledge is excluded from the definition of "cab" provided under Section 65 (20) of the Finance Act, 1994. Therefore, in the facts of the present case the service tax is not applicable. He placed reliance on the following judgments: -

- Maharashtra State Road Transport Corpn. – 2016 (42) STR 32 (Tri. Mumbai)
- Sangam travels – 2017 (50) STR 297 (Tri. All.)
- Skyline Motors India Pvt Ltd – 2017 (6) GSTL 65 (Tri.All.)

3. Shri P. Ganesan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. As per the facts of the case the appellant had provided the bus service for transportation of school children from their homes to school and back. This service is clearly for the school children who are taking education in the school run by M/s. J K Paper Limited. Under rent -a -cab service the definition of cab is reproduced below:-

" (20) "cab" means –

(i)A motorcab, or

(ii)A maxicab, or

(iii)Any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward"

Provided that the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub – clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab;"

From the above definition it can be seen that the motor vehicle which is rented for use by an educational body imparting skill or knowledge or lesson on any subject or field shall not be included within the meaning of cab. In this case it is admitted fact that the motor vehicle has been used by an educational body i.e., school for transportation of school children. Therefore, the same is excluded from the definition of rent-a -cab.

4.1 We find that the lower authorities have denied the exclusion of such service in definition on the ground that the service recipient is J.K paper Limited which is a commercial organization and cannot be treated as educational body. We do not agree with this contention of the Revenue for the reason that the transportation was used for school children who are studying in the school run by J.K paper Ltd therefore, the bus service was exclusively used for transportation of children and not for the business purpose of J.K Paper Ltd. Accordingly, we are of the considered view that the use of motor vehicle being for transportation of school children is clearly excluded from the definition of rent- a – cab service. Therefore, the same is not liable to service tax. This issue has been considered in various judgment cited by the appellant which supports the appellant’s case; therefore, the demand is not sustainable.

5. Accordingly, the impugned order is modified. The appeal is allowed with consequential relief, if any, in accordance with law. Stay Application also stands disposed of.

(Pronounced in the open court on 17.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

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