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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 473 of 2012-DB
(Arising out of OIO-05/STC/COMMR./BRC-I/2012 Dated- 17.09.2012 passed by Commissioner of Central Excise Customs & Service Tax–VADODARA-I)

M/s. Ram Krishna Travels P. Ltd **........Appellant**
P/13-16, Stop N Shop Plaza, R.C. Dutt Road,
Vadodara-390005.

VERSUS

C.C.E & S.T. –Vadodara-I **........Respondent**
Commissioner of Central Excise, Customs & Service Tax New
Central Excise Building, Race Course Circle
Vadodara-390007.

APPEARANCE:
Shri. Saurabh Dixit, Advocate for the Appellant
Shri. Prabhat K. Rameshwaram, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 10102 /2023

DATE OF HEARING: 03.10.2022
DATE OF DECISION:23.01.2023

RAMESH NAIR

Brief facts of the case are that the appellant are engaged in the business of Tour Operator and Travel Agent. On scrutiny of the documents & records seized/received/collected from the Appellant and from the statement of Director of Appellant, it was observed by the department that appellant had launched as specially designed tourist packages and they were also providing similar packages for child passengers, but in this packages, over and above the cost of air ticket they recovered an additional amount charges for the stay, meals and sight-seeing etc. Appellant was also providing air tickets without the above specially designed packages. The Appellant had entered into agreement with certain Airlines under which special price are given for bookings. The Appellant recovered actual ticket fares from the customers but paid only the agreed price to the Airlines, which was much lesser than the ticket cost. The amount paid to the airlines was lesser than the amount charged/collected from the passenger/ tourist for offer packages. The difference amount retained by way of their profit for the facilities provided by them. Appellant has paid the service tax only on the commission received for Air Tickets. However, on scrutiny of the invoices, the investigating officers observed that appellant had charged and collected the extra amount from the customers for providing complementary package in respect of tour packages. The appellant paid the service tax @.618% by classifying the services as Air Travel Agent, whereas scrutiny of the invoices clearly reveals that in case where complimentary packages was given, the appellant has charged a higher amount and acted as Tour Operator. It therefore, appears that in such cases appellant was liable to pay service tax under the category of "Tour Operator" at applicable rates. The department initiated show cause proceedings, seeking confirmation of the Service Tax demand. The SCN dated 11-04-2011 issued in this regard, culminated in the impugned adjudication order dated 17-09-2012, wherein Service Tax demand of Rs. 5,00,42,872/- was confirmed along with interest. Besides, equal amount of penalty was imposed under Section 78 of the Finance Act, 1994 and also under Section 76 and 77 of the said Act. Feeling aggrieved with the adjudication order, the appellant has preferred the present appeal before this Tribunal..

2. Shri. Saurabh Dixit, learned Counsel appearing for the appellant submits that the issue in hand is no more res-integra inasmuch as identical so-called package tour was provided by various Air lines such as Air India as well as Jet Airways itself, i.e. charging only "published air fare" and providing accommodation/ food/ sightseeing on complimentary basis to the passengers, and the consistent judicial view suggest that no service tax is leviable thereon as Tour Operator Service. He placed reliance on the following decisions.

- Jet Airways (India) Ltd. – 2016(3) TMI 164 –CESTAT Mum
- Jet Airways (India) Ltd. – 2015(11)TMI 908 –CESTAT Mum
- Air India 2016(8)TMI 1237 –CESTAT New Delhi

2.1 He further argued that be that as it may, while the appellant had merely undertaken sale of air ticket in the capacity of Air Travel Agent, but even assuming this is amounting to providing tour package, admittedly, it was a pre-defined fixed package, without any element of separately planning/scheduling/ organizing/ arranging tour at all. The Appellant, at the most, was merely operating tour, which is not sufficient to attract the rigors of "Tour Operator Service". He placed reliance on the following decisions in this regards.

(i) Cox & Kings India Ltd. – 2014(35) STR 817 (Tri- Del)

(ii) Commissioner Vs. Cox & Kings India Ltd. – 2015(39)STR J308 (SC)

2.2 He also submits that the present arrangement is on fixed date-wise travel arrangements. While it is merely air ticket sales, at the most, it is more in the nature of operating tour, if at all, and surely not planning /scheduling/ organizing or arranging tour at all. The appellant merely pays to Hotel/local travel agent directly for each passenger, as if it is a complimentary gift provided by the Appellant to them. In that sense, the arrangement is not different from giving free trolley bag/ gold coin/ gift vouchers to customers who makes purchase with a vendor. Merely because what is given free is accommodation instead of cash gift/merchandise/voucher etc., it does not ipso facto become taxable. Anyway, free service is not subject to levy of Service tax at all. The Appellant had given free complimentary voucher to the passengers, who could present such voucher and avail benefit of complimentary accommodation, food, sightseeing etc. to the extent extended to them. Still, the passengers pay only for the published air fare to the Appellant, and the same is also treated as only air fare even for the LTC purpose of the passengers.

2.3 He also submits that the dominant aspect of the transaction, even going by section 65A of the Finance Act, 1994, is sale of air ticket. It is treated as much by air line as also passengers and there is no doubt that hotel stay/food etc. was merely complimentary and secondary. This is akin to providing foods on complimentary basis in airlines, being part of air ticket cost. The food purchased has already suffered appropriate tax in such case and giving it on complimentary basis does not once again invoke Service tax levy. Admittedly, this is not outdoor catering service and for same reasons, complimentary accommodation/food etc. in the present matter is not Tour Operator Service provided by the Appellant at all. Even in the present case, the hotel accommodation /local travel agent service procured by the Appellant from third parties and given on complimentary basis to passengers has already suffered Service tax in the hands of the actual providers. That such transaction cannot be taxed once again in the hands of the Appellant. He placed reliance on the following decisions.

- Sky Gourmet Catering Pvt. Ltd. 2009(14)STR 777(Tri. –Bang.)
- Sky Gourmet Catering Pvt. Ltd. 2011(4)TMI 1267-Karnataka High Court.
- LSG Sky Chef 2017(49)STR 286 (Kar.)
- Celebral Learning Solutions P. Ltd. 2013(32)STR 379 (Tri. Del)

- Celebral Learning Solutions P. Ltd. 2018(10)GSTL 37 (Tri. Del)

2.4 He further submits that the reference can also be made to various cases, where although certain complimentary after sales automobile services were given by the agency selling vehicle, no amount was being recovered separately for the same. Such amount was already loaded in the value of the vehicle sold. Under such circumstances, it was held that such incidental and ancillary activity cannot be separately charged to the levy of Service tax under authorized service station service category. He placed reliance on the following decisions.

- ASL Motors Pvt. Ltd. 2008(9)STR 356 (Tri.- Kolkata)
- K.P. Automobiles Pvt. Ltd. 2009(13)STR 389 (Tri. Del)
- Kiran Motors Ltd. – 2009 (16)STR 74 (Tri. Ahmd)

2.5 He also argued that the issue can be said to be covered vide the analogy drawn by the Hon'ble Larger Bench in the case of Kaifila Hospitality & Travels Pvt. Ltd. 2021(47)GSTL 140 (Tri. LB).

2.6 He also submits that, whenever the Appellant actually provides tour operator service (other than complimentary accommodation/ food etc.) or where extra amount is charged for the accommodation /food /sightseeing purpose, they had paid applicable service tax under Tour Operator Service during the material period itself.

2.7 Without prejudice to the above he also submits that in any case, even if the charges made in the impugned order are acceptable, for the sake of argument, in such case, appellant are eligible for claiming abatement under Notification No. 01/2006-ST.

3. On the other hand, Shri. Prabhat K. Rameshwaram, learned Additional Commissioner (Authorized Representative) opposed the contentions of the Ld. Counsel by reiterating the finding of impugned order.

4. Heard both sides and perused the records.

5. The issue involved in this case is whether the activity undertaken by the appellant would get covered under taxable service provided under "tour operator service". The case of the department is that as per the agreement

with Indian Airlines, Jet Airways and Sahara Airlines the appellant recovered the actual ticket fares from the customers but paid only the agreed price to the Airlines, which was much less than the ticket cost. As per the said agreement the appellant conducting tours, offering specially designed package tour to their customers and are operating as "Tour Operator" and are booking tickets as per the agreement. Whereas they are paying service tax under the category of "Air Travels Agent Service" however appellant are liable for payment of Service tax on the total value of ticket which includes the cost of package tour provided by Appellant under the category of "Tour operator Service".

6. We find that the 'Tour Operator' has been defined under Section 65(115) ibid to mean 'any person engaged in the business of planning, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made there under'. The scope of service was substantially enhanced by the Finance Act (No.2) of 2004 by including " the person who are engaged in planning, scheduling, organizing or arranging tour by wherever means like rail, air, waterway, etc." On a conjoint reading ibid, it reveals that the person providing business of planning, scheduling, organizing or arranging tours should fall under the ambit of taxable category of Tour Operator Service for the purpose of payment of service tax. On perusal of the disputed package features, it is clear that prima-facie appellant is not providing any consultancy in the nature of planning, scheduling, organizing and arranging tour on behalf of the particular tour for the passengers. We find that the Tribunal in the case of Jet Airways India Ltd. *(supra)* has held that various tour packages provided by the airlines to the passengers i.e similar to the packaged offered by the appellant shall not cover under the preview of Tour Operator Service. However the Judgments of Jet Airways India Ltd. and Air India *supra* relied upon by the appellant here were not relied upon by them before the Ld. Commissioner. Therefore, we are of the view that the said matter needs to be re-considered by Ld. Commissioner in the light of the Judgments relied upon by the appellant. The judgments relied upon by the appellant shall apply directly only after verifying the facts of each case. As regards the limitation, we observe that the same has also not been considered on its true facts and the legal issue involved in the present case.We find that the Appellant were paying service tax under the category of "Air Travel Agent

Service" and also filed ST-3 accordingly. The adjudicating authority have not properly examined the fact whether there is a suppression of facts or otherwise. Accordingly, the issue of limitation was also not considered properly.

7. We therefore set aside the impugned order and allow the appeal by way of remand to the adjudicating authority. All the issues are kept open for reconsideration. Needless to say that the appellant should be given sufficient opportunity to make their submission and documents, if any required, and also be granted the personal hearing before *de novo* adjudication.

(Pronounced in the open court on 23.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI