IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/2788/2012-CU[DB]

(Arising out of Order-in-Appeal No.181-ST/APPL/KNP/2012 dated 24/05/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur)

M/s Travel Care & Tours — **Appellant**

Vs.

Commissioner, Central Excise & Service Tax, Kanpur — **Respondent**

Appearance:

Absent on Call — for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), — for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 21/02/2019

FINAL ORDER NO.**70380 / 2019**

Per: Archana Wadhwa

Nobody appeared for the appellant. Accordingly we have heard learned A.R. and have gone through the impugned order.

2. We note that service tax to the extent of Rs.4,17,642/- stands confirmed against the appellant under the category of 'Rent a Cab Service' and penalty of Rs.8,35,284/- stand imposed under Section 76 & 78 of the Finance Act, 1994

along with imposition of penalty of Rs.5,000/- under Section 77 of the said Act.

3. The said service tax confirmation is for the period 01.04.2004 to 31.03.2007 on the findings that the appellant have provided 'Rent a Cab Service' to Dr. B. R. Ambedkar University, Agra. The said vehicle was being provided by the appellant to the university for transporting the examination papers etc. and the charges were being collected on the basis of per kilometer or lump sum for distance travelled. In such a scenario the appellant's contention is that the same would not fall under the category of rent a cab, so as to raise demand against them. For the above proposition they have relied upon the following cases:-

i. Shemco India Transport – 2011 (24) STR 409 (Tri.)

ii. Bharat Travels Co. - 2010 (20) STR 646 (Tri.)

iii. Ganesh Maniyani – 2008 (9) STR 152 (Tri.)

4. We note that Tribunal in the case of M/s Ganesh Maniyani V/s Commissioner of Central Excise, Manglore reported at 2008 (9) S.T.R. 152 (Tri.-Bang.) has held that wherever the vehicle is being provided for transport of newspapers and payments are made by the service recipient based on trips made by the vehicle, the services would not get covered under renting a cab service. To the same effect is

another decision of the Tribunal in the case of M/s Shemco India Transport V/s Commissioner of Central Excise, Ludhiana reported at 2011 (24) S.T.R. 409 (Tri.-Del.). It was held that where the vehicles provided were without any seat for carrying passengers and the same were used for transporting the goods, the activity would not be covered under renting a cab scheme. Similarly in the case of M/s Bharat Travels Co. V/s Commissioner of Service Tax, Ahmedabad reported at 2010 (20) S.T.R. 646 (Tri.-Ahmd.). Tribunal has held that where charges are being collected based on kilometer per hour or lump sum for distance travelled, the services were held to be out of specified category.

5. Inasmuch as the issue is covered on merits by the above referred decisions, we set aside the impugned order on the said ground itself without going into the alternative plea of demand being barred by limitation. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

(Pronounced & Dictated in Court)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

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