FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 12/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71240-71241/2017-CU[DB] dated 05/07/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1 ST/MISC/70274/2016, ST/CROSS/39/2010	ST/488/2009	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
2 ST/MISC/70275/2016, ST/CROSS/38/2010	ST/489/2009	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001

Name and Address of Respondent

3 Dwivedi Travels
Chatkahana, Naini,,,
ALLAHABAD
,U.P.

4 Chandra Travels
Chatkahana, Naini,,,
ALLAHABAD
,U.P.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

MS. STUTI SAGGI
ADVOCATES(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

MISC Application Nos: ST/MISC/70274 & 70275/2016
CROSS Application Nos. : ST/CROSS/39 & 38/2010

APPEAL Nos. : ST/488 & 489/2009-CU[DB]

(Arising out of Order-in-Appeal No. 12,13-ST/ALLD/2009 dated 16/03/2009 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Allahabad)

Commissioner of Customs, C. E. & S. T.-Allahabad **Appellant**

Vs.

Dwivedi Travels (in Appeal No. ST/488/2009) &

Chandra Travels (in Appeal No. ST/489/2009) **Respondent**

Appearance:

Shri Sandeep Kumar Singh (Dy. Commi.)AR for Appellant
Shri Ms Stuti Saggi (Advocate) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 05/07/2017
Date of Decision : 05/07/2017

FINAL ORDER NO.:- 71240-71241/2017

Per: Anil Choudhary

The issue in these appeals filed by Revenue is whether the Learned Commissioner (Appeals) is correct in holding that the appellant have not provided service under the category of 'Tour Operator Service' as defined in Section 65(115) of the Finance Act, read with Section 65(113) and (114) of the Finance Act.

2. The brief facts as per SCN are that both the appellants had provided Bus/Minibus to M/s Indian Petrochemicals Corporation Ltd. formerly known as M/s Recron Synthetics Ltd., Allahabad (hereinafter referred to as 'IPCL') for transporting their employees, school children, families from various places to the place of their work, school etc. and received payments thereof from them during 01/04/2002 to 31/03/2006 as intimated by IPCL. The transport of passenger from one point to another point is treated as 'Tour Operator Service' by Revenue, and such service is leviable to Service Tax. The journey from one place to another is treated as tour and vehicles used as contract carriage is tourist vehicle in terms of definition provided under the Finance Act, 1994. Therefore, the aforesaid appellants as a 'tour operator' are liable to pay Service Tax in terms of Section 68 of the Finance Act, 1994 along with interest under Section 75 of the said Act. The appellants had (i) failed to take registration under Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994; (ii) failed to pay Service Tax due under Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1974; (iii) failed to file periodical returns in form of ST 3 –under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and (iv) also failed to submit a list of all accounts maintained by them in relations to tax under Rule 5 of the Service Tax Rules, 1994. It also appears that the appellants had not submitted

any information to the department. They suppressed the fact of providing of taxable service to IPCL and receipt of payments and also violated aforementioned statutory provisions with intent to evade payment of Service Tax. Therefore, the Service Tax amount is liable to be recovered from the aforesaid appellants in terms of proviso to Section 73 (1) of the Finance Act, 1994 and the aforesaid appellants are also liable for penalty under Section 76, 77 and 78 of the Finance Act, 1994 for contravention of aforesaid provision of the Finance Act, 1994 and the Service Tax Rules, 1994. Accordingly, show cause notices vide C. No. V(MP) ST-912) Adj-6572007, dated 08/06/2007 and C. No. VI(MP) ST(12) Adj-66/2007, dated 08/06/2007 were issued to the appellant No. 1 and the appellant No. 2 respectively demanding Service Tax amounting to Rs. 11,47,517.00 and Rs. 8,30,824.00 respectively under proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and proposed penalty under Section 76, 77 and 78 of the Finance Act, 1994. The adjudicating authority held that the appellant No. 1 liable to pay Service Tax of Rs. 4,54,539.00 and Education Cess of Rs. 4,468.00 (Total Rs. 4,59,007.00) during the period 01/04/2002 to 31/03/2006 and appellant No. 2 liable to pay Service Tax of Rs. 3,28,839.00 and Education Cess 3,491.00 (Total Rs. 3,32,330.00) along with interest and the same was recoverable from the appellants under proviso to Section 73

(1) and Section 75 of the Finance Act, 1994 respectively and the appellants liable for penalty under Section 76, 77 and 78 of the Finance Act, 1994. Accordingly, the adjudicating authority passed the orders as below.

Appellant	Confirmed Service Tax as shown below alongwith interest under proviso to Section 73 (1) and Section 75 of the Finance Act, 1994	Imposed penalty under Section 76 @ Rs. 200.00 per default	Imposed penalty under Section 77	Imposed penalty under Section 78
Appellant No. 1	Rs. 4,59,007.00	Rs. 4,59,007.00	Rs. 1000.00	Rs. 4,59,007.00
Appellant No. 2	Rs. 3,32,330.00	Rs. 3,32,330.00	Rs. 1000.00	Rs. 3,32,330.00

3. Being aggrieved, the respondents herein referred appeal before the Learned Commissioner (Appeals) on the grounds among others that they are transporting employees of the company from the residence to the workplace and children of employees from residence to school and back, which is not taxable under tour operator service. The show cause notice and the Order-in-Original have proceeded on the presumption that the respondents have provided tour operator service to measures Indian Petrochemicals Corp. Ltd. (IPC and for short) and accordingly, the tax have been confirmed. There is no basis for such presumption under the facts and circumstances. The Learned Counsel appeals examined the

various definitions under the Finance Act and also under the Motor Vehicles Act, as referred to in the Finance Act, and was pleased to allow the appeal, observing – I find the employees of a particular factory/establishment and their children were transported from one place to another regularly for enabling them to go to their workplaces/schools. This act does not come within the ambit of 'tour' as defined in the Act as the same is neither a pleasure trip nor a visit for special purpose to learn or look around the place visited. Contract carriages, of course, is one of the basis for holding a person as tour operator but it is necessarily required that there should be an involvement of 'tourists vehicle', which is not the case here in. Moreover, it is not on the record that service was performed in the tourist vehicle. The tourist's vehicle is required to confirm to the specifications as provided under Rule 128 of Motor Vehicle Rules, 1989 read with Section 243 of the Motor Vehicles Act, 1988. It is further a fact on record that the vehicles of the respondent assessee were hired by IPCL for transporting their staff/employees/school children from residential areas to the factory/school and back. Such activities of transporting of employees to factory and office/ school and take them back on daily basis, in a contract carriage, is not covered under the definition of tour operator. Reliance was placed on the ruling of this Tribunal in Tamil Nadu State Transport Corporation Ltd. v/s CCE, Chennai, 2007-06 STR 322. The Tribunal had held the transport of employees from different places to a common destination like place of work, such as factory and bringing them back on a daily basis does not appear to me a planned, scheduled, organised, arrangement of tour using the buses.

4. Being aggrieved the Revenue is in appeal before this Tribunal on the grounds that according to the work order dated 23, February, 2005, the journey from one place to another, that is carriage of employees of IPCL is covered by the definition of 'tour'. As per terms and scope of the contract party/respondents devotion, attention, involvement in the duty of providing transportation to employees of IPCL from one place to another for a commercial consideration clearly established that the party is engaged in tourist vehicle business, covered by a permit.

5. Heard the parties.

6. Having considered the grounds of appeal and on perusal of the records, we are satisfied that the activity done by the respondent does not come under the definition of 'tour operator', which means any person engaged in the business of planning, scheduling, organising or arranging tour (which may include arrangement for accommodation, site seeing or other similar services) by any mode of transport and includes any person engaged in the business of operating tours in a tourists vehicle covered by a permit as granted under the Motor Vehicle Acts and Rules thereunder. We also find that it is nowhere case of the Revenue that respondents have used a

tourist vehicle as defined under the provisions of the Finance Act read with the Motor Vehicles Act. We further find that similar issue have been considered by Hon'ble Madras High Court in Secretaries Federation of bus owners versus Union of India reported at 2006 (2) S.T.R. 411, it was held that such activities do not come under the purview of tour operator service as defined in the Finance Act. Merely because the respondents are holding the permit, they do not become liable to service tax for 'Tour Operator Service.' Accordingly, we dismiss these appeals filed by the Revenue. The cross objections & Misc. Applications also stand disposed of in the aforementioned terms.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
27/10/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001