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: 30/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/70074/2017-CU[DB]** dated **10/01/2017**

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/52772/2014	**Sangam Travels** 111-a/5, Ashok Nagar, KANPUR UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

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Copy To
3 Advocate(s) / Consultant(s):

Dharmendra Srivastava & Associates, C.A
13/392(I) CIVIL LINES,
KANPUR,
UTTAR PRADESH

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4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

14 C.D.R. 15 Office Copy ~~16 Guard File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.ST/52772/2014-CU[DB]

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-030-13-14 dated 04/02/2014 passed by Commissioner of Central Excise & Customs, Kanpur)

M/s Sangam Travels **Appellant**

Vs.

Commissioner of Central Excise & S.T., Kanpur **Respondent**

Appearance:

Shri Dharmendra Srivastava, C.A., for Appellant.

Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

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

Date of Hearing : 10/01/2017

Date of Decision : 10/01/2017

FINAL ORDER NO-70074/2017.........

Per: Anil G. Shakkarwar

The present appeal is filed against Order-in-Original No. KNP-EXCUS-000-COM-030-13-14 dated 04/02/2014.

2. The brief facts of the case are that the appellants are private bus operator engaged in providing mainly the services of transportation to children to transport them from their residences to school and from school to respective residences. It appeared to revenue that the said service was covered under 'Rent-a-cab Scheme Operator Service' and was taxable

to Service Tax. Therefore, appellant were issued with a show cause notice dated 05.03.2013 demanding service tax of Rs.74,37,463/- under the service 'Rent-a-cab Scheme Operator Service' from October, 2007 to 30th June, 2012 and under other than negative list service from 01.07.2012 to 31.12.2012. The appellant submitted before the Original authority that they have entered into contract with two schools namely Delhi Public School and Jain International School for providing transportation service to the students enrolled in the said schools to bring students from their respective residences to school and back from school to residences and said services are exempt as clarified by CBEC under letter F.No.137/70/2007-CX-4 dated 15.12.2008. The original authority has held that the said clarification deals with such cab when it is engaged by the school but in the present case the consideration is received from the parents of the children and therefore, it is not engaged by school and therefore said clarification is not applicable in the present case. For the period after 01.07.2012, he has held that the Mega exemption under Notification No.25/2012 is not applicable in the present case and therefore he has denied the benefit of said notification and confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant is before this Tribunal.

3. The appellant has contended that the terms of agreement with Delhi Public School clearly provide that appellant shall provide transportation facility to the students of the said schools and teaching staff. They have further contended that there is no dispute that the said buses were engaged in providing transportation to the children who were going to the said two schools and it is immaterial whether they ~~are~~ were being hired by the school or by parents of the school going students. They have further contended that as per serial No.09 of Notification No.25/2012-ST dated 20th June, 2012 read with clause (f) of definition in the said notification, it is clear that any service of transportation of students for educational purpose is exempted from Service Tax with effect from 01.07.2012.

4. Heard the learned Counsel for appellant. He has contended that the said clarification dated 15 December, 2008 was in respect of the words used in definition of 'Cab' in the first proviso under the said definition "rented for use by an educational body" and contended that there is no dispute that the said buses were used for transportation of students from resident to school and school to the resident. There is no dispute that the transport operator has entered into contract with the school and schools have imposed conditions on them. The only issue is the interpretation of above stated words "rented for use by an educational body." He has further

contended that the revenue is understanding the meaning of words "rented for use by an educational body" to be educational body should have entered into contract with the bus operators whereas there is no such restriction in the said provisions.

5. Heard the learned D.R. for revenue, who has supported the impugned Order-in-Original.

6. Having considered the rival contentions and on perusal of records we understand that the appellant has provided bus service to the students going to Delhi Public School and Jain International School and said schools have entered into contract with the appellant for providing said services for transportation of children and that the transportation charges were to be collected by the appellant directly from the parents of those school going children and there is no dispute that such buses were used for the said purpose as per the show cause notice. The proviso to the definition of Cab provided by Section 65(20) of Finance Act, 1994 with effect from 01.06.2007 provides that "Maxi Cab" referred to in sub clause-(ii) or motor vehicles referred to in Sub clause-(iii) which is rented for use by an educational body imparting skills or knowledge or lessons on any subject or field, other than a commercial training or coaching center shall not be included within the meaning of Cab. Hence, we understand that so long as the motor vehicles or cab which are rented by

anyone and they are used by service reccivers and such service is used by an educational body then such vehicles are not covered by definition of Cab in the said Section. In the present case the educational body is using the said vehicles for bringing the students to schools and back to their houses and they are also rented. Therefore, they are covered by the phrase "rented for use by an educational body". Therefore, the vehicles are not covered by the definition of Cab under Section 65 (20) of the Finance Act, 1994. Therefore, the said show cause notice is not sustainable. We therefore, set aside the impugned Order-in-Original and allow the appeal. The appellant shall be entitled for consequential relief, if any.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति / Certified True Copy
8.2.17
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