CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/389/2009-DB

[Arising out of Order-in-Original No. 02/2009-ST dated 30/01/2009 passed by Commissioner Of Central Excise, Customs and Service Tax , CALICUT]

M/s. Benzy Travels
Room No.106, 62, Jaijikar Street,
Near Crawford Market,
MUMBAI – 400 003.
MH

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax Calicut
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE – 673 001.
KERALA

Respondent(s)

Appearance:

Mr. S.S GUPTA, CA
102-106,A WING 1ST FLOOR
Zaitoon Apartment 182, Station road,
Goregaon (W)
Mumbai - 400062
MH

For the Appellant

Mr. Rama Holla,
Superintendent (AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20556 / 2019

Date of Hearing: 16/07/2019
Date of Decision: 16/07/2019

Per : P. ANJANI KUMAR

Briefly the facts of the case are that M/s. Benzy Travels are engaged in the transport of passenger business by running buses between Mumbai

International Airport and Cochin. Revenue sought to consider the activity of the appellants as 'Tour Operators' demanding service tax on the tickets booked by them at Cochin. A show-cause notice dated 21.10.2009 was issued to the appellants which was confirmed by the Order-in-Original No.2/2009-ST dated 27.1.2009 confirming service tax of Rs.28,96,175/- along with equal penalty under Section 78 of the Finance Act, 1994 and also imposing penalty under Section 77 and 76 of the Finance Act, 1994.

2. The learned counsel for the appellant submits that vide Notification No.20/2009 dated 7.7.2009 provides exemption for tour operators with contract carriage permit for the specified services and Notification No.334/8/2009-TRU dated 31.8.2009 issues a corrigendum to read "contract carriage or tourist vehicles with a permit in place of contract carriage permit". Vide Section 75 of the Finance Act, 2011, exemption given to a person of tour operator having contract carriage permit for interstate or intrastate for transportation of passengers, was given retrospective effect. It was further clarified, by CBEC vide Circular No.334/3/2011-TRU dated 28.2.2011, at 12.7 that retrospective effect have been given in the Finance Bill to interstate and intrastate transportation of passengers, in a vehicle wherein contract carriage and tourist vehicle permit for the period from 1.4.2000 to 6.7.2009. Learned counsel further submits that Mumbai Bench of the Tribunal in their own case has decided the issue of taxability of tourist vehicles. Therefore, the issue is no longer *res integra*.

3. Learned AR for the Department has reiterated the findings of OIO and relied upon ***Hans Travels vs. CCE, Indore: 2016 (42) STR 94 (Tri.-Del.)***.

4. Heard both sides and perused the records of the case. We find that the issue is no longer *res integra* and Coordinate Bench of the Tribunal at Mumbai has decided the issue and the Tribunal in para 9 has observed as under:

> *"9. As we have observed supra, the intent to accord parity to public and private point-to-point operations was embodied in exemption Notification No. 20/2009-S.T. On reference from operators, the distinction between 'tourist vehicles' and 'contract carriages'*

> *performing the same activity as State-run under-takings was eliminated by a corrigendum circular. Consequently, we find no difficulty in holding that, for the purpose of exclusion from tax, vehicles used by service providers is also to be so construed. The validation Act which refers to the notification cannot be said to have any other intent. We also note that Section 75 of Finance Act, 2011 make no reference to the Motor Vehicles Act, 1988 or the distinctive permits issued thereunder. The Validation Act has not made any alterations to Section 65(105)(n) of Finance Act, 1994 but has accorded a privilege to a certain class of service providers. The validation is to accord retrospective exemption to the same class of providers to which the Central Government did, within its powers, accord prospective exemption. Accordingly, we hold that appellant-assessee is entitled to exemption of tax on collections generated from use of 'tourist buses' for passengers other than tour etc. There is no difference in the treatment accorded to the two categories of vehicles. Consequently, appeal of Revenue for re-quantification after ascertainment of the certification of the vehicles is not sustainable."*

We find that case law cited by the learned AR has not given any finding but remanded the issue back to the original authority following the decision of this Bench in the case of ***Ideal Travels vs. Commissioner : 2012 (28) STR 257*** wherein also the issue was remanded back. In view of the decision of Mumbai Bench of the Tribunal in appellant's own case in respect of tickets sold by them at Mumbai, we find that the issue is covered by the decision but the only difference being in the instant case before us is service tax is sought to be levied on the tickets sold at Cochin.

5. In the result, we allow the appeal with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **16/07/2019.**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

rv...