CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.56041 Of 2013

[Arising out of OIA No.04-05/ST/Appeal/CHD-II/2013 dated 16.01.2013 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]

Shri Gurjant Singh Beant Singh : Appellant (s)
H.No.137A, Street No.2, Dashmesh
Nagar, Patiala, Punjab-147001

Vs

The Commissioner of Central Excise
And Service Tax, Chandigarh-II : Respondent (s)
Plot No. 19, Central Revenue Building,
Sector-17C, Chandigarh-160017

WITH

(ii) Service Tax Appeal No.56042 Of 2013 [Shri Gurjant Singh Beant Singh]
[Arising out of OIA No.04-05/ST/Appeal/CHD-II/2013 dated 16.01.2013 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]

(iii) Service Tax Appeal No.56043 Of 2013 [Shri Gurjant Singh Beant Singh]
[Arising out of OIA No.255-267/ST/CHD-II/2012 dated 10.12.2012passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]

(iv) Service Tax Appeal No.56044 Of 2013 [Shri Harcharan Singh S/o Shri Atma Singh]
[Arising out of OIA No.255-267/ST/CHD-II/2012 dated 10.12.2012 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]

(v) Service Tax Appeal No.56045 Of 2013 [Shri Ranjit Singh S/o Shri Mohinder Singh]
[Arising out of OIA No.255-267/ST/CHD-II/2012 dated 10.12.2012 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]

(vi) Service Tax Appeal No.56046 Of 2013 [Shri Surjit Singh S/o Shri Chhota Singh].
[Arising out of OIA No.255-267/ST/CHD-II/2012 dated 10.12.2012 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]

(vii) Service Tax Appeal No.56047 Of 2013 [Smt. Nachhatar Kaur W/o Shri Baldev Singh]
[Arising out of OIA No.255-267/ST/CHD-II/2012 dated 10.12.2012 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]
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<u>APPEARANCE:</u>
Shri Jatinder Mohan, Consultant for the Appellant
Shri Raman Mittal, Authorised Representative for the Respondent

CORAM :
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.60311-60317/2023

Date of Hearing: 21.08.2023

Date of Decision:30.08.2023

Per:P. ANJANI KUMAR

Shri Gurjant Singh and others who have provided one bus each to Punjab Road Transport Corporation have filed these appeals:

Sl. No.	Appeal No.	Name of the Appellant	OIA No.
1.	ST/56041/2013	Shri Gurjant Singh Beant Singh	04-05/ST/Appeal/CHD-II/2013 dated 16.01.2013
2.	ST/56042/2013	Shri Gurjant Singh Beant Singh	04-05/ST/Appeal/CHD-II/2013 dated 16.01.2013
3.	ST/56043/2013	Shri Gurjant Singh Beant Singh	255-267/ST/CHD-II/2012 dated 10.12.2012
4.	ST/56044/2013	Shri Harcharan Singh S/o Shri Atma Singh	255-267/ST/CHD-II/2012 dated 10.12.2012
5.	ST/56045/2013	Shri Ranjit Singh S/o Shri Mohinder Singh	255-267/ST/CHD-II/2012 dated 10.12.2012
6.	ST/56046/2013	Shri Surjit Singh S/o Shri Chhota Singh	255-267/ST/CHD-II/2012 dated 10.12.2012
7.	ST/56047/2013	Smt. Nachhatar Kaur W/o Shri Baldev Singh	255-267/ST/CHD-II/2012 dated 10.12.2012

2. The appellants entered into different contracts with M/s PRTC; they have provided one bus each to M/s PRTC; the appellants were paid remuneration on per-kilometre basis; the appellants had to bear the expenses on account of diesel, repair and maintenance, salary of bus drivers etc; the remuneration paid was for kilometre-basis. The Department was of the opinion that the appellants have provided "Rent-a-Cab Service' and have not discharged the applicable service tax on the same; show cause notices were issued to the above appellants and were confirmed by various OIOs which were upheld by different OIAs as cited above. Hence, these appeals.

3. Shri Jatinder Mohan, learned Consultant appearing for the appellants makes two-fold submissions; one being that the authorities have not considered the fact that the turnover of each of the appellants was well within the exemption limit provided under Notification No. 06/2005 dated 01.03.2005 taking into account the fact that 60% of the gross receipt is exempted from payment of service tax in terms of Notification No.01/2006 dated 01.03.2006; he submits that the Department themselves have accepted this stand in respect of other persons who have similarly hired out their buses to M/s PRTC; he submits that Deputy Commissioner, Central Excise Division, Chandigarh vide orders dated 22.03.2012 and Asst. Commissioner , Patiala vide order dated 31.10.2007 have discharged the show-cause notices issued to the appellants therein.

4. The second leg of the submission by the learned Consultant was that the service provided by the appellants will not qualify to be "Rent-a-Cab Service" as proposed in the show-cause notices. Learned Consultant also submits that in the facts and circumstances of the case, penalty cannot be imposed. He relies upon the following:

- Ashok Kumar Mishra- 2017 (12) LCX 0014 (Tri. Del.)
- Visvanath Mishra- 2019 (22) GSTL 271 (Tri. All.)
- R.S. Travels- 2015 (38) STR 3 (Uttarakhand)
- Federation of Bus Operators Association of Tamil Nadu- 2006 (002) STR 0411 (Mad.)
- Grasim Industries Ltd.- 2005 (183) ELT 0123 (SC)
- Uni Deritend Ltd.- 2012 (25) STR 475 (Tri. Mumbai)
- R.S. Travels- 2008 (12) STR (Tri. Del.)
- Sri Sai Krishna Travels- 2010 (18) STR 220 (Tri. Bang.)
- Sunil L.Parmar- 2010 (19) STR 584 (Tri. Ahm.)
- Muniruddin-2013 (31) STR 136 (All.)

5. Shri Raman Mittal, learned Authorized Representative for the Department reiterates the findings of the impugned order.

6. On hearing the rival contentions and having perused the records of the case, we find that the gross value of the taxable service rendered by each of the appellants is less than the threshold limit of Rs.10 Lakhs as prescribed under Notification No.06/2005-ST dated 01.03.2005 after giving allowance to the exemption for 60% of the gross receipt in terms of Notification No.01/2006-ST dated 01.03.2006. We find that the Departmental authorities have considered this principle and accepted the contention of the appellants in the cases cited above. We further find that Principal Bench of CESTAT, in the case of Ashok Kumar Mishra (supra) held that for the purpose of calculating the threshold limit, 60% of the consideration

exempt, vide Notification No.01/2006, should not be takenintoaccount. We find that if 60% of the consideration received by the appellants is excluded, they fall under the exempted category and as such, are not liable to pay any tax. Therefore, we find that the appeals succeed on this count. Ongoing through the agreements relied upon by the appellants, we find that the appellants have simply provided their buses to M/s PRTC on hire and have received remuneration on per-kilometre basis; there is no arrangement of renting. Wefind that Hon'ble High Court of Uttrakhand in the case of R.S. Travels (supra) held that when there is a contract of hire and there is no renting of a cab, there is no question of the assessee being assessed in respect of services rendered in connection with rent-a-cab as there is no renting at all. Therefore, we are of the considered opinion that the appeals succeed on the issue of classification of services also. When we find that the appeals succeed on both counts, the question of penalties does not arise.

6. In view of the above, we find that the impugned orders are not sustainable and are liable to be set aside. We do so and allow all the seven appeals.

(Pronounced on 30/08/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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