CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/18 & 19/2008

[Arising out of Order-in-Appeal No.125 to 127/2007 dt. 14.11.2007 passed by the Commissioner of Service Tax, Chennai]

Parveen Travels Private Ltd. — Appellant

Versus

Commissioner of Service Tax,
Chennai — Respondent

Appearance:

Shri V. Vijay Anand, Consultant
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 23.10.2017

FINAL ORDER No. 42376 - 42377 /2017

Per Bench

The facts of the case are that appellants were operating buses for conducting tours and also operating daily day trips (point to point)

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to Tirupati and Pondicherry. Department took the view that the vehicles operated by the appellants are covered by permits issued b the Transport authorities under the Motor Vehicles Act and the point to point services operated by them would be liable to be classified under the category of "tour operator service" Accordingly, the following show cause notices issued to the appellant for inter alia proposing demand of service tax with interest liability under the category of "Tour Operator Service" :

S.No.	SCN No. and Date	Period	Service Tax Demand (Rs.)
1.	21/2005 dt. 08.07.2005	1.4.2000 to 07.10.2004	97,69,701
2.	14/2006 dt. 13.04.2006	October 2004 to September 2005	11,39,834
3.	15/07 dt. 12.04.2007	October 2005 to March 2007	4,73,693

Vide the impugned order dt. 14.11.2007 all these show cause notices were adjudicated. Proceedings initiated in the SCN No.14/2006 dt. 13.04.2006 were dropped by the adjudicating authority. In respect of SCN No.21/2005 dt. 08.07.2005 revised amount of Rs.48,02,834/- was confirmed and demanded along with interest liability thereon. Proposed demand of Rs.4,73,693/- in the third SCN dt. 12.04.2007

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was confirmed. Penalties were also imposed under various provisions of law. Hence these appeals.

2. Today, when the matter came up for hearing, on behalf of appellant, Ld. Consultant Shri V.Vijay Anand made oral submissions which can be broadly summarized as under :

(i) Proceedings are hit by limitation. They had intimated the department vide a letter dt. 10.01.2003 that service tax would not be applicable to ordinary contract carriages and enclosed a list of contract carriages operated for daily trips. However, the SCN covering this period was issued only on 08.07.2005. Accordingly, out of the amount of Rs. 48,02,834/- for the period 1.4.2000 to 07.10.2004 (SCN No.21/2005 dt. 08.07.2005), only a proportionate demand corresponding to the normal period of limitation alone can sustain, which they concede. However, they seek cum tax benefit in respect of such proportionate duty demand for normal period of limitation since they have not collected any service tax from their customers.

(ii) In respect of the demand of Rs.4,73,693/- (SCN No.15/2007 dt. 12.04.2007), they accept the tax liability, however they seek cum tax benefit since they have not collected any service tax from their customers.

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(iii) Ld. consultant also submits that there is no case for imposition of penalties since omission on their part was due to bonafide belief that the activities performed by them would not come under the service tax net.

3. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy supports the adjudication. He points out that appellants may well have given a letter on 10.01.2003. However, the period covered by the corresponding notice starts from 01.04.2000. For this reason only, the adjudicating authority has observed that the letter appears to have been sent with the intention of evading duty and later on to justify their action.

4. Heard both sides and have gone through the facts.

5. The appellants are conceding tax liability in respect of the period October 2005 to March 2007 in SCN No.15/07 dated 12-04-2007 involving tax liability of Rs.4,73,693/- and in respect of SCN No.21/2005 dt. 08.07.2005, however limited to the normal period of limitation therein. The ground touted against invocation of extended period is that they had sent a communication on 10.01.2003 to the Range Superintendent. However, in our view, that letter will not help their case since the dispute does not start on that date or even proximate to it but almost three years earlier. This letter therefore

cannot then be a good argument for setting aside the demand for the period beyond normal period of limitation.

6. In the event, we hold that the SCN No.21/2005 dt. 8.7.2005 will not be hit by limitation. Appellant has conceded his liability for part of the period; there can then be no reason why such liability will not extend to the entire period covered by the notice. Accordingly, we hold that the tax liabilities will be demandable for the periods 1.4.2000 to 07.10.2004 and October 2005 to March 2007 [SCNs dt. 8.7.2005 and 12.04.2007) respectively].

7. However, we find merit in the plea of the appellant for grant of cum tax benefit. There is no allegation that appellant had collected service tax from their customers but had not paid the same to the exchequer. It is also a fact that the issue of taxability in respect of stage carriages/contract carriages and tour operators was mired in confusion during impugned period and only after the judgment of the Hon'ble Madras High Court in *Secretary, Federation of Bus Operators Association of Tamil Nadu Vs UOI – 2001 (134) ELT 618 (Mad.)* wherein the matter had been settled. The said judgement was appealed to Supreme Court and the Hon'ble Supreme Court dismissed the appeal as time-barred as reported in 2003 (157) ELT

A144 (SC). In the event, plea of cum duty benefit is granted. So ordered.

8. For the same reasons, penalties imposed on the appellant under Sections 76 and 78 of the Finance Act, 1994 are set aside. However, we do not intend to interfere with the penalty imposed under Section 77 ibid.

Appeals are disposed in the above terms.

(dictated and pronounced in court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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