CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO.-1

Service Tax Appeal No. 53456 of 2015

[Arising out of Order-in-Appeal No. 185(SLM)ST/JPR/2014 dated 15.05.2015 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Commissioner of Central Excise (Appeals) ...... Appellant
NCR Building, C-Scheme
Jaipur-302005

Versus

Crown Tours Limited ...... Respondent
Opp: Hotel Rajputana Sheraton
Police Road
Jaipur (Raj.)

APPEARANCE :

Shri Rakesh Kumar, Authorised Representative of the Appellant
Shri Rahul Lakhwani, Advocate, for the Respondent

CORAM : HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING: 01 April, 2019
DATE OF DECISION: 30 September, 2019

FINAL ORDER NO. 51309/2019

JUSTICE DILIP GUPTA:

This appeal, which has been filed by the Department, seeks to assail the order dated 15 May, 2015 passed by the Commissioner (Appeals) Central Excise, Jaipur[1] by which the

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1. the Commissioner (Appeals)

demand of Service Tax of Rs. 21,76,955/- confirmed by the Additional Commissioner by order dated 24 March, 2014 with interest has been set aside. It needs to be noted that the Commissioner (Appeals), after noticing that the Respondent had deposited the amount of Rs. 85,556/- towards Service Tax for transportation, imposed penalty under sections 78 and 76 of the Finance Act, 1994[2] for the reason that the amount was deposited with delay.

2. The Respondent, Crown Tours Ltd.[3], is a 'tour operator' providing services like transportation, entry to monuments and joyrides etc. to the main tour operator in relation to a 'package tour'. It availed the benefit of abatement of Service Tax of 75% of the amount charged in gross receipts as per the Exemption Notification No. 01/2006 dated 01 March, 2006 as amended by Notification No. 38/2007 dated 23 August, 2007. An audit was conducted on the Respondent for the period of October, 2007 – March, 2010. The Department alleged that the Respondent did not provide the whole 'tour package' as defined in the Explanation to the Notification and thus would not qualify for 75% abatement stipulated at Sl. No. 2(n)(i) of the Notification. According to the Department, the Respondent fell at Entry 2(n)(iii) of the Notification, which covers 'services other

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2. the Act
3. the Respondent

than the services in (i) and (ii) provided by a tour operator in relation to a tour' and so that the Respondent was eligible to avail an abatement of 60% only.

3. Consequently, a show cause notice dated 19 March, 2013 was issued to the Respondent regarding non-payment of Service Tax amounting to Rs. 22,62,511/- and also proposing a penalty under sections 76 and 78 of the Act for contravening the provisions of sections 67 and 68 of the Act and Rule 6 of the Service Tax Rules, 1994. The Respondent filed a reply to the show cause notice on 22 April, 2013. The Additional Commissioner, by order dated 24 March, 2013 held that the services provided by the Respondent would be covered by entry 2(n)(iii) of the Notification and hence the abatement available to the Respondent would be 60% of the gross receipt charged and not 75%. The order, therefore, confirmed the demand of Rs. 22,62,511/- and ordered it to be recovered under section 73(2) of the Act along with interest under section 75 and penalty under sections 76 and 78 of the Act.

4. The Respondent filed an Appeal before the Commissioner (Appeals) submitting that the services provided by the Appellants were covered at Sl. No. 2(n)(i) of the Notification since it depended on a tour operator providing services 'in relation to' a tour package and not the tour package in its entirety. It also

submitted that the amount of Rs. 85,556/- deposited by them was done suo moto after they were informed by the Department that they were availing abatement at an incorrect rate, and that this amount was only in relation to the services provided exclusively in relation to transportation. It was further submitted that the Department had previously known about and not objected to it availing the benefit of 75% abatement, both during a previous audit conducted for the period of April, 2003 to July, 2004 as well as in a refund granted to them on 08 August, 2012 for the excess service tax deposited on acceptance of the argument that they were covered under Sl. No. 2(n)(i) of the Notification.

5. The Commissioner (Appeals), by the impugned order, partially reversed the original order and held that the services provided by the Respondent would be covered at Sl. No. 2(n)(i) of the Notification. Thus, the demand with interest was set aside. However, as regards the demand of Rs. 85,556/- in relation to transportation, the Commissioner noticed that the amount with interest had been deposited but penalty equal to the Service Tax was imposed.

6. Shri Rakesh Kumar, learned Authorized Representative of the Department, has submitted that the Respondent had wrongly availed abatement of 75% of the value instead of 60% as the correct entry would be at Sl. No. 2(n)(iii)

and not Sl. No. 2(n)(i) of the Notification dated 01 March, 2006 as amended by Notification dated 23 August, 2007. In this connection, learned Authorised Representative submitted that the two ingredients i.e accommodation charges and food charges were absent in the services provided by the Respondent, as would be clear from the invoices/bills issued by the Respondent and, therefore, as all the services mentioned at Sl. No. 2(n)(i) of the Notification were not provided by the Respondent, the abatement provided under Sl. No. 2(n)(i) would not be available to the Respondent and the Respondent would be entitled to the abatement as provided for under Sl. No. 2(n)(iii). He, therefore, submitted that the Commissioner (Appeals) committed a mistake in holding that the abatement provided for at Sl. No. 2(n)(i) would be available to the Respondent even if some of the services mentioned therein were provided by the Respondent.

7. Shri Rahul Lakhwani, learned Counsel for the Respondent, however, submitted that from a plain reading of the entry at Sl. No. 2(n)(i) of the Notification, it would be clear that there is no requirement that a service provider must provide all the services contemplated therein and even if some of the services contemplated are provided, the service provider would be entitled to the abatement as contemplated under entry at Sl. No. 2(n)(i) of the Notification. He, therefore, submitted that the Commissioner (Appeals) committed no illegality in not sustaining

that part of the demand. In support of his submission, learned Counsel placed reliance upon the two decisions of the Supreme Court in **Doypack Systems Pvt. Ltd. vs Union of India & Ors.**[4] and **Renusagar Power Co. Ltd. vs General Electric Company & Anr.**[5] and a decision of the Allahabad High Court in **Touraids (I) Travel Services vs Commissioner of Central Excise**[6]**.**

8. We have considered the submissions advanced by the learned Authorized Representative of the Department and the learned Counsel for the Respondent.

9. In order to appreciate the submissions, it would be appropriate to reproduce the Notification dated 01 March, 2006 as amended by Notification dated 23 August, 2007 and the same is as follows :

> "**3**. In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (3) of the Table below and specified in the relevant sub-clauses of clause (105) of section 65 of the Finance Act, specified in the corresponding entry in column (2) of the said Table, from so much of the service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding

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4. 1988 (36) ELT 201 (SC)
5. (1984) 4 SCC 671
6. 2014 (35) STR 234 (Alld)

entry in column (5) of the said Table, of the gross amount charged by such service provider for providing the said taxable service, subject to the relevant conditions specified in the corresponding entry in column (4) of the Table aforesaid:

Notification No. 01/2006-ST dated 01 March, 2006 as amended by Notification No. 38/2007-ST dated 23 August, 2007

TABLE

(1)	**(2)**	**(3)**	**(4)**	**(5)**
S. No	**Sub-clause of clause (105) of Section 65**	**Description of taxable service**	**Conditions**	**Percentage**
1.	xxx	xxx	xxx	xxx
2.	(n)	(i) Services provided or to be provided to any person, by a tour operator in relation to a package tour. Explanation - The expression "package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour.	The bill issued for this purpose indicates that it is inclusive of charges for such a tour.	25
		(ii) Services provided or to be provided to any person, by a tour operator in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour.	(a) The invoice, bill or challan issued indicates that it is towards charges for such accommodation, and (b) this exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.	10
		(iii) Services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to a tour.	The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.	40"

10. The case of the Department is that the Respondent is providing service contemplated under Rule 2(n)(iii) of the Notification, while the case of the Respondent is that it is providing service as contemplated under entry at Sl. No. 2(n)(i) of the Notification.

11. Entry at Sl. No. 2(n)(i) relates to services provided or to be provided to any person by a tour operator in relation to a package tour. The Explanation to the entry defines the expression "package tour" to mean a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour. The Respondent provides some of the services defined in the expression "package tour". According to the Department, if even one service mentioned at Sl. No. 2(n)(i) is not provided, the service provider will not be entitled to the abatement contemplated under Sl. No. 2(n)(i).

12. It is not possible to accept the submission of the Department. Entry at Sl. No. 2(n)(i) does not require the service provider to provide each and every service mentioned in the Explanation. The meaning assigned to "package tour" in the Explanation is when transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in

relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour. There is no reason why if some of the service(s) are not provided, the abatement as contemplated under Sl. No. 2(n)(i) should not be available to the service provider. The service has to be provided by a tour operator **in relation to** a package tour.

13. This is what has also been observed by the Commissioner (Appeals) in the impugned order and the relevant portion is as follows :

> "On perusal of the definition of package tour, it is observed that any service from the services such as transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour, the said services shall be treated in relation to package tour. In this case the appellants are engaged in providing the part of the services of package tour therefore the same is also the part of package tour. In the said explanation there is nothing mentioned that whole of the services are required to be provided by the one person but the word in relation to the package tour mentioned. The word in relation having vide scope to cover all the services which are provided in relation to the package tour which can be one service or multiple services. In the appellants' case it is found that the appellants have provided multiple services i.e local transportation, joy rides, entry to monuments, guide fees, assistance etc. which are the part of package tour, therefore, the said services qualify in relation to the package tour and accordingly covered under Sr. No. 2(n)(i) of the said notification. In the explanation there is nothing that the complete tour package are required to be provided. In the contrary, it is mentioned that if the tour operator provided as part of the package tour to the person undertaking the tour, the same qualify as package tour. In this case, the appellants are engaged in providing the part of the services to main tour operation in relation to the package tour. Thus, any service

provided in relation to the package tour is eligible for exemption under Sr. No. 2(n)(i) of the said notification.

Further, on going through the Sr. No. 2(n)(ii) the same is related if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour. In this case the services in respect of booking accommodation is only covered. Under Sr. No. 2(n)(iii) services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to a tour is covered. In other words, the services which are not covered under Sr. No. (i) is covered under Sr. No. (iii). In other words, other than the services such as transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are covered. In broader way it can be said that the services which are not similar to the services as mentioned in Sr. No. 2(n)(i) & (ii) are covered under Sr. No. 2(n)(iii). In the given circumstances the appellants had undertaken the services like local transportation, joy rides, entry to monuments, guide fees, assistance which are covered and part of Sr. No. 2(n)(i). Thus, the said services cannot be said other than services. Further, in Sr. No. 2(n)(ii) the similar services is mentioned which means the services though not mentioned in the explanation being exhaustive in nature but the same services is similar to the serviced mentioned in Sr. No. 2(n)(i) is also part of the said services. Therefore, in Sr. No. 2(n)(i) not only the services as mentioned in the explanation are covered but also the services which is similar to the said services are also covered. **In view of the above, I hold that the services provided by the appellants are in relation to the package tour and covered under Sr. No. 2(n)(i) of the said Notification and accordingly they are entitled for the abatement as mentioned against the said Sr. No. 2(n)(i) of the said Notification. In this way the demand of Rs. 21,76,955/- along with interest confirmed on the above issue is not sustainable**. Accordingly, the penalty imposed under section 76 and 78 is also not held as confirmed in respect of said demand. Held accordingly."

14. It would also be pertinent to refer to the decision of the Supreme Court in **Doypack Systems Pvt. Ltd.** The Supreme Court observed that the expression 'in relation to' is a very broad expression and the observations are as follows :

> **"50.** The expression "in relation to" (so also "pertaining to"), is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see *State Wakf Board* v. *Abdul Aziz* (A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10,following and approving *Nitai Charan Bagchi* v. *Suresh Chandra Paul* (66 C.W.N. 767), *Shyam Lal* v. *M. Shayamlal (*A.I.R. 1933 All. 649) and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term "relate"' is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

15. The same view was reiterated by the Supreme Court in **Renusagar Power Co. Ltd.**

16. The Allahabad High Court in **Touraids (I) Travel Services** followed the aforesaid decisions of the Supreme Court and observed that :

> **"28.** The phrase 'in relation to' the tour means "in the aid of tour also. Therefore, if any service is rendered in relation to or in the aid of tour is liable to be taxed. The taxable service is therefore not only means mere providing of car, taxies, contract carriages on a temporary basis but it would also include other facilities supplied in relation to tour as a whole."

17. Thus, for all the reasons stated above, the services provided by the Respondent would fall under entry at Sl. No.

2(n)(i) of the Notification and the Respondent would be entitled to 75% abatement.

18. The Appeal filed by the Department is, therefore, liable to be dismissed and is, accordingly, dismissed.

(Pronounced in the Court on 30 September, 2019)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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