**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**NEW DELHI**

**PRINCIPAL BENCH – COURT NO. IV**

# Service Tax Appeal No. 55775 of 2014

(Arising out of Order-in-Original No. 11/COMMR/IND/2014 dated 28.7.2014/30.7.2014 passed by the Commissioner, Central Excise & Customs & Service Tax, Indore)

**M/s Hans Travels** Appellant
15/3, South Tukoganj
Dhakkanwala Kua,
Indore (M.P.)

Versus

**Commissioner of Central Excise & Service Tax, Indore** Respondent
PB No. 10, Manik Bagh Road,
Manik Bagh Palace, Indore,
Mahdya Pradesh - 452001

**Appearance**

Shri Manish Saharan, Advocate - for the appellant
Shri A. Thaplial, DR - for the respondent

**Date of Hearing/Decision: 17/10/2019**

**CORAM:**
**HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)**
**HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)**

Final Order No. 51500/2019

## Bijay Kumar :

This appeal is directed against the Order-in-Original No. 11/Commr./ST/IND/2014 dated 30.7.2014 by the appellant, M/s Hans Travels, 15/3, South Tukoganj, Indore. Vide the said order, the Commissioner has confirmed the service tax demand of Rs. 4.65,295/- (Rupees Four lakhs Sixty five thousand two Hundred and Ninety five only) and Rs. 48,43.227/- (Rupees Forty eight lakhs Forty three Thousand Two Hundred and Twenty Seven only) in respect of 'travel agent and tour operator services' and also in respect of 'business support services' along with the interest and penalty of Rs.10,000/- (Rupees Ten Thousand only) under the provisions of Section 73(i), Section 75, Section 77 and Section 78 of the Finance Act, 1994 (hereinafter referred to as 'the Finance Act'). The demand has been confirmed in pursuance of the Show Cause No. ST/05/2013/Adj-I/50025 dated 8.3.2013. Being aggrieved by the impugned order, the appellant is before us in this appeal.

2. The brief facts of the case is that the appellant is holder of service tax registration under the category "tour operator" and failed to pay service tax from period 2008-2009, 2009-2010, 2010-2011 and 2011-2012 for the amount mentioned in the Show Cause Notice. The Commissioner while adjudicating the case has dropped the demand in excess to that confirmed in the impugned order. The appellant is engaged in providing tour operator service in terms of Section 65(105) of the Finance Act and provided the services of booking tickets for themselves and also for other service providers and also for booking luggages by bus, rent contract booking in addition to receipt of amount from bus users. A demand of Rs. 1,78,188/- was confirmed on the ground that the appellant are acting as a ticket booking agent for various travel agents and getting commission from these agencies in terms of Section 65(105)(zzx) of the Finance Act. Further, another demand of Rs. 2,87,105/- was confirmed on account of bus contract booking which was either for marriages or picnics. The appellant has also provided the service as agreed, for person hiring the bus and thus

liable to service tax. The said service was not eligible for exemption benefit as there were no evidences for the fact that the buses were booking for marriage or picnic. The next demand amounting of Rs. 48,43,229/- was confirmed under head "luggage booking". The Department was of the view that this luggage booking by the appellant in their buses for different places were made by the business entities and, therefore, classifiable under "business support services", as against the claim of appellant for such services under GTA services, which was liable for payment of service tax under reverse charge mechanism and the liability to pay service tax got shifted to consignor or consignee. In addition to above, the other type of luggage booking were also made for which the charges were less than Rs. 750/- and hence were exempted from service Tax. Accordingly, the entire demand was confirmed on the aforesaid grounds.

3. The learned Advocate on behalf of the appellant submits that as far as the demand pertaining luggage booking under 'business support service' is concerned, the same stands decided in their favour by this Tribunal in their own case being **M/s Hans Travels Vs. CCE, Indore – 2015-TIOL-2098-CESTAT-DEL.** Therefore, this portion of demand is not sustainable as the said order has attained finality due to Revenue having not filed any appeal against the said decision of this Tribunal. Regarding the demand in respect of ticket booking is concerned, it is not being contested and the appellant has accepted the same.

3.1 Regarding the demand of Rs. 2,87,105/- in respect of 'bus contract booking' is concerned, it is the contention of the learned

Advocate that the demand has been confirmed in excess to that proposed the impugned Show Cause Notice. The Show Cause Notice demanded service tax to the extent of Rs. 1,04,278/- on this service under heading 'tour operator service'. However, the learned adjudicating authority has confirmed service tax demand of Rs. 2,87,105/- in the impugned order, which is not correct and bad in law placing reliance on the judgements of High Court and Hon'ble Supreme Court in case of **CCE, Nagpur Vs. Ballarpur industries Ltd. - 2007 (215) ELT 489 (SC)** and **Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd. -2006 (201) ELT 513 (SC).**

3.2 It is the submission of learned Advocate that when the major demand, that pertained to 'luggage booking service' is not sustainable in view of the decision of Hans Travels (supra), the rest of the demand will be within the exemption limit under SSI exemption Notification No. 06/2005 dated 1.3.2005 and, therefore, no service tax would be payable by the appellant. Learned Advocate also submitted that the demand is also time barred as the same was repetitive in nature and the earlier Show Cause Notice on the same issue was decided by the learned Commissioner and the same travelled up to the Tribunal in their own case as referred above.

4. Learned Authorised Representative has, however, supported the impugned order and submitted that the adjudicating authority has confirmed the demand on account of extended period of limitation due to non-cooperation of the appellant in providing the relevant data.

5. We have considered the rival submissions and the appeal records.

6. The issue involved in this case is confirmation of demand under tour operator service in respect of tourist/contract vehicles being employed by the appellant. As far as demand in respect of ticket booking agent is concerned, the same is not being contested and accordingly being upheld.

7. Regarding the demand pertaining to bus rent contract booking, we find that there is a clear discrepancy in the quantification and the impugned order confirmed the demand more than what has been reflected in the Show Cause Notice. Regarding the demand pertaining to luggage booking under business support service is concerned, the same stands decided in their own case vide order of this Tribunal being **2015-TIOL-2098-CESTAT-Del.**, wherein it is held as under :

> "3. We have considered the facts of the case and contentions of the appellant. As stated earlier, the demand of Rs. 98,424/- in respect of the commission received by the appellant as ticket booking agent for various travel agencies, is not contested. As regards demand of Rs. 9,18,286/- confirmed under BSS, it is seen that this service tax is confirmed on freight charges (luggage booking charges) recovered by the appellant for transportation of goods on its buses. The adjudicating authority has held that such goods which were carried on such buses belonged to businessmen and hence the service related to commercial activity of the businessmen and therefore covered under BSS. Goods carriage has been defined under Section 214 of the Motor Vehicles Act, 1988 "Goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" and therefore transportation of goods on the appellant's buses would amount to transportation of goods in a goods carriage. BSS (more precisely support services of business or commerce) is defined under Section 65(104c) of the Finance Act, 1994 as under :
>
> > **"Support Services of Business or Commerce"** means service provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders

> and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing."

A mere perusal of the said definition makes it quite clear that transport of goods on the buses would not come under the category of BSS merely because the goods transported belonged to businessmen, indeed the inclusive part of the above definition leaves no scope for doubt in this regard. Accordingly, the demand of Rs. 9,18,286/- confirmed under BSS is not sustainable.

4. As regards remaining demand under tour operator service, it is a fact that the appellant was granted licence to operate buses as contract carriages and not as stage carriages. The contention of the appellant that it operated its buses as stage carriages does not alter the category of its buses from contract carriages to stage carriages. Tour is defined under Section 65(113) ibid as under :

> "Tour means a journey from one place to another irrespective of the distance between such places."

Tour Operation is defined under Section 65(115) ibid as under :

"Tour Operator means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988)or the rules made thereunder."

With effect from 10.09.2014, the said definition reads as under:-

> "Tour Operator" means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport and includes any person engaged in business of operating tours in a tourist vehicle covered by a permit under the Motor Vehicles Act, 1988 or the rules made there under;"

A tourist vehicle is defined under Section 65(114) read with Section 2(43) of Motor Vehicles Act, 1988 as under :-

> "Tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf:'

Thus, it would appear that the impugned service rendered by the appellant using a contract carriage would fall under the category of tour operator service. Indeed in the case of M/s Ideal Travels & Others Vs. CCE, Mangalore – 2011-TIOL-1850-CESTAT-Bang, CESTAT rejected a similar contention (that the service provided did not fall under the ambit of tour operator service). However, CESTAT in that case remanded the matter with the following words:-

> "10. However, their alternative plea for the benefit of Notification No. 20/2009-ST dt. 07/07/2009 read with corrigendum dt. 31/08/2009 merits consideration. The said Notification granted full exemption from payment of service tax on the taxable service referred to in Section 65(105) (n) of the Finance Act, 1994, provided by a tour operator having contract carriage permit or tourist vehicle permit for inter-State or Intra-State transportation of passengers, excluding tourism, conducted tours, charger or hire services. Parliament extended the exemption retrospectively up to 01/04/2000 vide Section 75 of the Finance Act, 2011. Prima facie, all the assesses before us are entitled to the benefit inasmuch as the impugned demands are for the period from April, 2000. The adjudicating authorities will have to examine their claim for exemption on merits, untrammelled by our prima facie view."

It is to be noted that in the above (Ideal Travels) case, CESTAT categorically stated that the adjudicating authority was to examine the applicability of Notification No. 20/2009-ST, dated 07.07.2009 on merits and should not be influenced by prima facie views expressed by it (i.e., the Tribunal)."

8. We thus hold that the demand pertaining to luggage booking is not sustainable. As the demand pertaining to ticket booking is confirmed as not contented. This leaves the amount of demand confirmed under heading bus contract booking which needs to reworked out by extending the benefit of exemption Notification 06/2005 dated 1.3.2005.

9. In view of above we set aside the impugned order and remand the matter to the adjudicating authority to re-determine the service tax in light of the aforesaid observation.

(Pronounced in open Court)

(Bijay Kumar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)