

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 24/07/2015

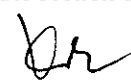
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/52281/2015-CU[DB] dated 30/04/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/603/2009	HANS TRAVELS 15/3, South Tokoganj, Indore(MP)

Name and Address of
Respondent

2	-C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
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Copy To

3 Advocate(s) / Consultant(s):

Alok Barthwal, Adv
227-B&C BASNI TRADE
CENTER,
581/5, M.G. ROAD,
INDORE,
MADHYA PRADESH

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

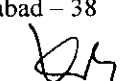
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

14 C.D.R. 15 Office Copy 16 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.**

Date of Hearing: 30.04.2015

For Approval & Signature :

**Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.ST/603/2009-CU[DB]

[Arising out of Order-in-Original No.16/COMMR./ST/IND/2009, dated 06.05.2009 passed by the C.C.E., Indore]

M/s. Hans Travels

Appellants

Vs.

C.C.E., Indore

Respondents

Appearance

Shri Manish Saharah, Advocate

- for the appellants

Shri Amresh Jain, DR

- for the respondents

**CORAM: Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

Final Order No. 52281/2015, dated 30.04.2015

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Per Mr. R.K. Singh:

Appeal has been filed against the Order-in-Original No.16/COMMR./ST/IND/2009, dated 06.05.2009 in terms of which service tax demand of Rs.1,21,99,408/- was confirmed for the period 2004-05 to 2007-08 along with interest and penalties (under Sections 76, 77 and 78 of the Finance Act, 1994). Out of the total demand, a demand of Rs.1,12,81,122/- was confirmed under the category of "Travel Agent and Tour Operator" service in tourist vehicles; demand of Rs.9,18,286/- was confirmed under the category of Business Support Service (BSS) on charges recovered for the goods transported by the appellant on the ground that the goods transported belonged to businessmen and thus related to commercial activity of these businessmen and therefore service rendered was BSS [Section 65 (104c) *ibid*] and not GTA service. The impugned demand was confirmed invoking the extended period holding that the appellant indulged in suppression of facts.

2. The appellant has contended that (i) out of the total demand under Travel Agent and Tour Operator service, an amount of Rs.98,424/- pertains to the service tax on the amount received as commission by it in respect of booking of passengers for others. The appellant has not contested this liability and indeed has paid the same. Thus, this amount is not a subject matter of dispute. (ii) As regards the remaining impugned demand under tour operator service, the appellant stated that it was operating buses as stage carriage, although the permit was for contract carriage and therefore it was not providing tour operator service. It also stated that such service has since been exempted under Notification No.20/2009-ST, dated 07.07.2009, which was given



retrospective effect from 01.04.2000 vide Section 75 of the Finance Act, 2011. It relied upon the judgement of CESTAT in the case of **M/s. Eagle Corporation Pvt. Ltd. Vs. CCE, Rajkot [2011-TIOL-876-CESTAT-AHM]** which remanded the case to the lower authority in the wake of the said Notification. (iii) There was a confusion with regard to leviability of the service tax on such service as is evident from the fact that the said Notification was given retrospective effect about two years after its issuance and therefore the extended period is not invocable. (iv) As regards the impugned demand under BSS, the appellant contended that it was booking luggage on buses and was charging transport charges for that and such service cannot fall under the category of BSS. Such service would fall under GTA service on which liability to pay tax is on the consignor or consignee paying the transport charges. Also, as the freight per consignment was less than Rs.750/-, it was exempted from service tax.

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*

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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 services 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:-

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

Tour Operator 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, sight seeing 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 upto 01/04/2000 vide Section 75 of the Finance Act, 2011. *Prima facie*, all the assesseees 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).

5. As regards the invocability of extended period and mandatory penalty, the appellant has referred to the retrospective applicability (with effect from 01.04.2000) of Notification No.20/2009-ST to plead that there was confusion about the issue during the relevant time. This pleading was not made (as it could not have been made) before the adjudicating authority because the said Notification was not in existence at the time of issuance of the impugned order. This aspect has been kept in mind while remanding this case for *de novo* adjudication without expressing any opinion thereon.

6. In the light of the foregoing, we pass the following Order:-

- (i) The demand of Rs.98,424/- is upheld as uncontested.



(ii) Demand of Rs.9,18,286/- under Business Support Service is set aside.

(iii) As regards the demand under tour operator service, the case is remanded to the adjudicating authority for de novo adjudication on the limited aspect of eligibility of the appellant for the benefit of exemption under Notification No.20/2009-ST, dated 07.07.2009 as made applicable with effect from 01.04.2000, invokability of the extended period and imposability of mandatory penalty under Section 78 *ibid*. We make it clear that the adjudicating authority shall determine the eligibility of the appellant for the benefit of the said Notification keeping in view the fact that the vehicles involved were tourist vehicles and not stage carriages.

The demand and penalties will be re-computed based on the adjudicating authority's finding regarding eligibility (or otherwise) of the appellant for the benefit of Notification No.20/2009-ST, and invokability of the extended period and the provisions of Section 78 *ibid*.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)