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

**New Delhi**

PRINCIPAL BENCH – COURT NO. 3

**Service Tax Appeal No. 52108 Of 2018**

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-017-18-19 dated 12.04.2018 passed by the Commissioner (Appeals) of Central Goods, Service Tax and Central Excise, Tikrapara, Raipur, Chattisgarh]

**M/s Kailash Travelling Agencies** : **Appellant (s)**
Prop. Smt. Anita Sakhuja, C/o Kailash
Medical Store, Sadar Bazar, Bilashpur (CG)

Versus

**Commissioner of Central Goods, Service Tax, Central Excise-Raipur** : **Revenue (s)**
Central Excise Building, Dhamtari Road
Tikrapara, Raipur, Chattisgarh

APPEARANCE:
Shri Kapil Vaish, Advocate for the Appellant
Shri Anand Narayan, Authorized Representative for the Department

**CORAM :**
**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**
**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**FINAL ORDER No. 58594/2024**

Date of Hearing:09.07.2024

Date of Decision:18.09.2024

**HEMAMBIKA R. PRIYA**

The present appeal has been filed by M/s Kailash Travelling Agencies (hereinafter referred to as the appellant) against the Order-in-Appeal No. BHO-EXCUS-002-APP-017-18-19 dated 12.04.2018 wherein the Commissioner (Appeals) had rejected the appeal while upholding the demand confirmed by the original adjudicating authority.

2. The brief facts of the case are that the appellant is engaged in providing 'Rent-a-Cab Service' under sub-clause (o) of Section 65 (105) of the Finance Act 1994. The department had gathered information that the appellant had received the money for the services provided and had not paid the service tax on such amount. On scrutiny of the documents, it was noticed that the appellant had received an amount or Rs. 2,59,51,688/- from M/s SECL during the period October 2005 to December 2010. Accordingly, a show cause notice dated 13.04.2011 was issued to the appellant demanding service tax of Rs. 17,90,023/- (including cess) along with interest and penalty. The adjudicating authority vide Order-in-Original dated 30.08.2012 confirmed the demand of Rs. 17,90,023/- (including cess) under section 73(1) of Finance Act, 1994, alongwith interest under Section 75 and also imposed penalty of Rs. 17,90,023/- under section 78 and Rs. 200/- every day under section 76 and 77 of Finance Act, 1994. Aggrieved by the said order in original, the appellant filed an appeal before Commissioner (Appeals) Raipur, which was dismissed. Against the said impugned order of Commissioner (Appeals), the appellant filed an appeal before this Tribunal which vide Stay Order No. 54880/2014 dated 04.12.2014 had ordered for payment of pre-deposit of the service tax liability along with interest within eight weeks. The appellant then challenged the aforesaid stay order before the Hon'ble High Court of Chhattisgarh and the High Court vide its order dated 10.02.2015 held that "if the appellant is of the opinion that a part of

the adjudicated liability had already been deposited, it may be bring it to the attention of the Tribunal itself". The Hon'ble High Court further extended the time for pre-deposit by two weeks from 24.02.2015. Thereafter, the appellant filed a SLP before Hon'ble Supreme Court against the judgement of the High Court dated 10.02.2015 and the Hon'ble Apex Court vide order dated 30.03.2015 in appeal no. 8241/2015 dismissed the appeal. However, four weeks' time was granted to comply with order and directions passed by the Court. The appellant again appeared before the Tribunal which vide Misc. Order no. 50834/2016-CU (DB) dated 11.07.2016 observed that in view of Hon'ble High Court order, the appellant was allowed to adjust the amount of Rs. 4,63,873/- which they had already paid. Further, the appellant deposited an amount Rs. 13,26,150/- towards interest. The Tribunal vide Final Order No. ST/A/20799/2010-CU(DB) dated 06.02.2017 remanded the matter back to the original adjudicating authority. The Adjudicating authority vide Order in Original No. 21/ADC/ST/BILL/2017 dt. 31.10.2017 confirmed the demand of Service Tax under the category "Rent-a-cab Scheme Operator" for an amount of Rs. 13,72,890/- along with interest and equivalent penalty was imposed on the appellant under Section 78 of Finance Act, 1994. A penalty Rs. 5000/- under 77 of the Finance Act, 1994, was also imposed. Aggrieved by the said order, the appellant filed an appeal before Commissioner (Appeals), which has been disposed off vide the impugned order has upheld the demand and has been ordered for appropriation of the excess amount against penalty under section 78 of Finance Act, 1994. Being aggrieved, the appellant has filed the present appeal.

3. Learned Counsel for the appellant submitted that appellant had provided vehicles under rate contract as well as non-rate contract basis. In both the cases, drivers were the employees of appellants. Repair & maintenance, insurance and other statutory charges were borne by the appellant. The vehicles remained under control and possession of the appellant. The Ld. Counsel further submitted that it has been the consistent view of the courts that wherever vehicles remain under the control and possession of the vehicle owner, tax under the head rent-a-cab scheme operator service is not leviable. In support of his submissions, Learned Counsel relied upon the following decisions:-

- **CCE Vs. Sachin Malhotra reported in 2015 (37) STR 684 (Utt).**
- **RS Travels Vs CCE reported in 2008 (12) STR 27 (T). Upheld by Uttarakhand High Court.**
- **CCE Vs PB Bobde reported in 2015 (40) STR 953 (T).**
- **Ganesh Maniyani Vs CCE Mangalore, 2008 (9) STR 152 (Tri.-Bang) Department withdrew appeal in HC as reported in 2011 (21) S.T.R. 55 (Kar).**
- **CCE, Rohtak versus Miglani Taxi Service rep in 2009 (15) S.T.R 566 (Tri.- Delhi)**

3.1 Learned Counsel further submitted that there were also several decisions which had held that in similar cases service tax is payable viz., Commissioner of Service Tax, Ahmedabad Vs Vijay Travels [2014 (36) STR 513 (Guj)]; Anil Agnihotri Vs CCE [2018 (10) GSTL 288 (All)]. The Learned Counsel further contended that the major demand is beyond the normal period of 1 year. He stated that as the dispute was on interpretation of taxable service falling under section 65 (105)(0), and in view of aforesaid contrary decisions, it is obvious that there was a dispute on interpretation of provisions of Service tax law.

It is the settled law that in such cases, extended period of limitation cannot be invoked. Reliance is placed on following decisions:

- **Continental Foundation JT Venture Vs CCE reported in 2007 (216) ELT 177.**
- **International Merchandising Company, LLC Vs Commissioner of Service Tax New Delhi reported in 2022 (67) G.S.T.L. 129 (S.C).**
- **Commissioner of Service Tax Vs Vijay Travels rep in 2014 (36) S.T.R 513 (Guj).**
- **Pearl Travels Vs CCE & S.T Daman rep in 2020 (37) G.S.T.L 242 (Tri- Ahmd).**
- **Choudhry Yatra Co. Ltd Vs CCE, Nashik rep in 2013 (29) S.T.R 240. (Tri- Mumbai)**

3.2 Learned Counsel further stated that with effect from 01.04.2010, the appellant was not providing services to M/s SECL and the contract had changed from Ms. Anita Sakhuja to Mr. Gautam Sakhuja. Consequently, service tax on amounts paid by SECL to Gautam Sakhuja cannot be demanded from the appellant. During the period April 2010 to Dec 2021, the appellant had provided services valued at Rs. 5 lakh to service receivers other than SECL. In addition, the Learned Counsel prayed that the penalties under Section 77 & 78 are liable to be set aside under section 80 of Finance Act, 1994. He also submitted that the impugned order did not grant the benefit of reduced penalty of 25% in terms of proviso to section 78 of Finance Act 1994. It may therefore be held that appellant is eligible for benefit of reduced penalty.

4. Learned Authorized Representative appearing for the Department submitted that the issue of non-payment of service tax by the appellant came to the knowledge of the department on collection of the intelligence and during investigation proceedings. It is on record

that the appellant had provided rent-a-cab service to M/s SECL and received money from their customer. The copy of work order provided by M/s SECL reveals that the appellant collected money from their customer that included the service tax which was to be paid by the appellant. The appellant does not dispute regarding receipt of money from SECL. They had admitted that they charged service tax in their bills from M/s SECL. However, the appellant had disputed the loading of 50% value for levying service tax under Section 72 of the Finance Act 1994.

4.1 Ld. AR further submitted that the appellant has contended that the proprietor of the firm M/s Kailash Travelling Agency was Ms. Anita Sakhuja up to 31.03.2010 and thereafter her son Shri Gautam Sakhuja was the proprietor. Therefore, the demand for the period April 2010 to Dec-2010 on the Noticee Smt. Anita Sakhuja is not sustainable. However, the Ld. AR contended that the appellant had continued with the same registration number up to 12/2010 and have been receiving money from M/s SECL. Even the business was running under the name of same proprietorship i.e. M/s Kailash Travelling Agencies, Bilaspur. The appellant had neither intimated the department regarding the cessation of the business under the name M/s Kailash Travelling Agencies nor had they got the registration certificate amended. Therefore, their request on this count cannot be considered and their liability to pay tax on full amount from SECL and others as determined under section 72 ibid will sustain till Dec 2010.

4.2 Ld. AR further also submitted that the extended period had been rightly invoked as the appellant had charged service tax from their customer and had not deposited the same, which proves their intent to evade. He further submitted that the penalty under section 77 of the Finance Act 1994 was imposable as the appellant had been given ample opportunity to furnish the records/documents. They had failed to comply with the provisions of Section 77, and were liable to penalty.

5. Heard the ld Counsel for the appellant and the ld Authorised Representative for the department. We have also perused the case records. We note that this is the second round of litigation before this Tribunal. The earlier round of litigation involved the payment of pre-deposit, and not the issue which is under consideration in the present appeal. The undisputed facts of this case are as follows:

(i) Appellant is a proprietary firm, and is registered for provision of rent a cab service with the Department from 2001-2002

(ii) Appellant has provided rent a cab service to SECL valued at Rs 2,70,38,024/- from Oct 2005-Dec 2010.

(iii) Appellant has paid the entire service tax along with interest.

5.1 We first address the issue that arises for consideration as to whether the appellant was providing rent a cab service. We find that the SCN notes that the sample work order SECL /BSP /CGM /(P&A) /W.O./Hired Vehicle/05/33/2027 placed by SECL shows that the appellant had rented Tata Indica (Diesel) vehicles having Taxi permit as per NIT model 2004 and onwards in tip-top perfect working condition and to ensure trouble free travel on monthly rental basis asper NIT for operating at SECL Headquarters. The said Work Order also specified that the rate for rental would be inclusive of service tax.

From the aforesaid rendition of the work order, it is amply clear that the appellant was providing cars on rental basis to SECL. It has been contended before us that the appellant had provided vehicles under rate and non-rate contract basis. In both the cases, the drivers were the employees of the appellants. Repair and maintenance, insurance and other statutory charges were borne by the appellant and the vehicles remained under the control & possession of the appellant. Admittedly, the appellants are providing motor vehicles to various clients based on the agreements and received considerations for the same. It is also admitted that ownership of the vehicle continued to remain with the appellant with registration, insurance and other requirements so that the vehicle is owned by the appellant all throughout. We note that the statutory provisions for tax liability in terms of Section 65(105)(o) of the Finance Act, 1994 stipulates that the taxable service means any service provided or to be provided to any person by a rent-a-cab scheme operator in relation to the renting of a cab. The various terms of these definitions have further been explained in Section 65 of the Act itself. The liability to tax arises when a rent-a-cab operator provides a vehicle to another person on rent and receives consideration. The plain reading of the scope of the tax liability is to this effect only. The nature of arrangement may vary from party to party. In **CST v. Vijay Travels [2014(36) S.T.R. 513]** it was held that when a person carries on continuous activity of renting of a cab, i.e., letting for the use in case of a maxi cab or motor vehicle, such renting of a vehicle would invite taxable service. The Tribunal in **Ghanshyam Gupta [2017(11) STT 130]** held that when the assessee rented out a vehicle to a hirer, where the vehicle was stationed at the premises of the hirer and was under his exclusive control, the tax liability under rent-a-cab service would arise. In **R.S. Travels [2008 12 S.T.R. 27 (Tri-Del)]**, the Tribunal held that relying on the decision in the case of **Express Tours and Travels Pvt. Ltd. [2006 (3) S.T.R. 664 (Tri.)],** held that the Government's intention, is to tax the provider of a service, which involves hire and renting of a cab formally for a long period. It was further held that the test for ascertaining whether an activity is covered by the entry "rent-a-cab operator service" is as to whether it involves giving a cab with or without driver to a client for a certain period of time for some consideration, which can be on per hour or per day or per month basis. In the instant case, it is noted that the car had been hired on monthly basis by the client SECL, as per the sample work order. The rate contract also stipulated that such rate is inclusive of service tax. Accordingly, we hold that the impugned order is correct in holding that the appellant is liable to service tax in respect of the services rendered by him under the category of "rent-a-cab services". We also note that the aforesaid work order specifically includes that the rate was inclusive of service tax. This clearly means that the appellant was liable to pay the service tax dues for the provision of the said service. The decisions relied upon by the appellant deal with specific set of facts in terms of the agreement relevant to the respective cases.

5.2 We find that it has been contended by the ld Counsel that the liability of Ms Anita Sakhuja’s liability to tax is only till 31.03.2010 and thereafter Mr Gautam Sakhuja was the sole proprietor of the appellant. In this regard, we note that Proprietorship firms were liable to pay service tax if their aggregate value of taxable services exceeded the threshold limit specified in the Finance Act, 1994. The liability is on the firm and we note that the said show cause notice is addressed to M/s Kailash Traveling Agencies, Prop Ms Anita Sakhuja. It is also noted that the appellant did not cooperate in the investigations and did not produce any documents despite several reminders. We also note that the appellant constantly sought time to furnish any details claiming that they were not in possession of the same. It is also noted that there was no communication from the appellant that the sole proprietorship had changed from Ms Anita Sakhuja to Mr Gautam Sakhuja. The demand has been raised against the appellant for the rent-a-cab services provided by the appellant to SECL. The appellant failed to get the Registration Certificate amended. The appellant continued to receive the consideration from their client SECL in the name of the proprietor firm. In view of the same, we are unable to appreciate or accept this submission of the ld Counsel.

5.3 The Ld. counsel has submitted that extended period is not invokable as there was no suppression. We note that the appellant had taken service tax registration under the rent -a -cab service in 2001-02. The appellant had filed the returns upto 31.3.2005, and thereafter stopped filing returns. It is recorded in the show cause notice that it was during the examination of the records of SECL that the activity of the appellant came to the knowledge of the department. Thereafter, despite repeated letters, as note above, the appellant did not submit the required information to the department. They also did not appear for personal hearing fixed by the adjudicating authority. It has also been submitted before us that the appellant did not receive the notice for personal hearing fixed for 28.08.2012. This submission cannot be accepted as the other personal hearing notices were received by the appellant at their registered address. The case has been decided after giving five opportunities to the appellant, which is fair number of chances. We are also constrained to note that the work order issued by SECL specifically includes that the rate was inclusive of service tax. This clearly means that the appellant was aware that he/she was liable to pay the service tax dues for the provision of the said service, and failed to do so. This clearly establishes their intent to evade the tax. In view of the same, we hold that the extended period has been correctly invoked by the department.

5.4. As regards the submissions regarding payment of interest, we note that in the case of Pratibha Processors v. Union of India 1996 (88) E.L.T. 12 (S.C.)- the Supreme Court held that "Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable'. Accordingly, we hold that the demand of interest in the impugned order is correct.

5.5 We now consider the submissions of the appellant in respect of the penalties imposed under sections 77, and 78 of the Finance Act, 1994. We note that the impugned order has upheld the order-in-original for cogent reasons for the penalty imposed under section 77. We agree with these findings. The learned counsel submitted that in view of the fact that they had paid the entire service tax liability and interest thereon in compliance to CESTAT order, the penalty under Section 78 should be reduced. However, we are inclined to accept the submissions that reduced penalty of 25% is liable to be paid by them, as the legal provision in this regard is very clear. Section 78 of the

Finance Act,1994 provides for reduced penalty at 25%, provided the service tax and the interest thereon is paid within 30 days from the date of communication of the order of the Central Excise Officer determining such service tax. In the instant case, the order in original was passed on 31.10.2017. As per the impugned order, the appellant has paid the entire tax and interest amount on 11.07.2016, which is well before the date of the instant order in original. In view of the above, we hold that the appellant is eligible for the benefit of reduced penalty under Section 78 of the Act.

6. In view of the above discussions we hold as follows:-

(i) The appellant was providing rent-a-cab service during the impugned period

(ii) The demand on provision of the said service is upheld along with interest thereon

(iii) The penalty under section 77 is upheld

(iv) The penalty under Section 78 is reduced to 25% of the demand confirmed.

7. Accordingly, the impugned order is modified to the extent indicated above and the appeal is allowed to the extent indicated above.

*(Order pronounced in the open Court on 18.09.2024)*

**(BINU TAMTA)**
MEMBER (JUDICIAL)

**(HEMAMBIKA R. PRIYA)**
MEMBER (TECHNICAL)

*G.Y.*