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

Appeal No. ST/459 /2006 Date 15/07/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
R.S.TRAVELS
13-B,RAJPUR ROAD,DEHRADUN(UTTARANCHAL)

R.S.TRAVELS Appellant
Vs
C.C.E.MEERUT I Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/131/08 Customs dated 15/7/08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E.MEERUT I
   MANGAL PANDEY NAGAR,MEERUT
2. Adv. / Consult
   MR.P.C.JAIN
   332, ARAVALI APARTMENTS, ALAKNANDA, NEW DELHI-19
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar.Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
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Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Service Tax Appeal No. 459of 2006

[Arising out of Order-in-Appeal No.84/CE/MRT-I/2006 dt.19.6.06 passed by the Commissioner(Appeals), Meerut-I)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

1.	Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities:	:

M/s. R.S. Travels — Appellant

Versus

CCE, Meerut — Respondent

Appearance

Shri P.C.Jain, Advocate - for appellant
Sh. A.K.Madan, Authorised Departmental Representative (DR) - For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of order : 24.6.08
Date of decision : 15-7-08

Final Order No. ST/131/08

Per Rakesh Kumar :-

The point of dispute in this appeal is as to whether during the period of dispute i.e. from 1.4.2000 to 31.3.2004, the appellants were acting as "Rent-a-Cab" operator, as defined under Section 65(91) of the Finance Act,1994 and hence attracting service tax under Section 66 read with Section 65(105)(O) of the Finance Act, as contended by the Revenue or their activity was outside the purview of Rent-a-Cab operator scheme, as claimed by the Appellant. According to the Appellant, they were engaged only in giving their cabs on hire to their clients and this activity is not covered by the definition of Rent-a-Cab operator service, as given in Section 65(91) and hence they were not liable to pay any service tax.

2. Heard both sides.

2.1. Shri P.C. Jain, Advocate, the Ld. Counsel for the Appellant, made the following submissions:

(1) During the period of dispute as per Section 65(91) of the Finance Act, 1994, Rent-a-Cab operator means "any person engaged in the business of renting of cabs" and sub-Section 105(O) of Section 65 defined taxable service with regard to rent-a-cab scheme as any service provided to any person, by a rent-a-cab scheme operator in relation to the renting of a cab. Section 65(20) defined 'cab' as motor cab or maxi cab. The important word in the definition of rent-a-cab operator scheme is the word

"renting" which distinguished it from giving a taxi on hire. In rent-a-cab scheme, a person takes motor cab or maxi cab on rent for a definite period and the person paying the rent for that cab may either drive the cab himself or may engage a driver, not necessarily the driver provided by the scheme operator. In other words, the cab during the period of renting is temporarily out of the physical custody, control and possession of the owner of the vehicle. On the other hand, under the taxi hiring scheme, the taxi-cab is under the control and custody of the taxi operator or his agent, as driver of the taxi and the taxi cab is not under the control and custody of the person hiring the taxi. In this case, the appellant had given their vehicle on hire to ONGC and the charges for the same were on kilometer basis. The appellants were not giving their vehicle to their clients on rent.

(2) The Tribunal in the case of Kuldip Singh Gill vs. CCE, Jalandhar reported in 2006(3)STR.689 has held that when the transport operator, as per contract with Indian Oil Corpn., was not renting out any stipulated number of vehicles to the IOC but was being paid for trips to various places and during those trips, the vehicles continued to be with transport operator and the transport operator was paid for each trip depending upon the distance, time, etc. as per rate sheet, this activity of the transport operator would not be covered by the rent-a-cab service and the service tax demand was not sustainable.

(3) Taxi hiring scheme is governed by registration under Section 74 of the Motor Vehicle Act,1988, while rent-a-cab scheme is governed by Section 75 of the of the Motor Vehicle Act. The operators under taxi hiring scheme cannot give their vehicles on hire under rent-a-cab scheme and if they do so, they would be inviting punishment under the Motor Vehicle Act. Thus, the taxi hiring scheme and rent-a-cab scheme are two different schemes and what attracts service tax is the rent-a-cab scheme and not taxi hiring scheme.

(4) Reliance placed by the lower authority on the judgment of the Hon'ble Madras High Court in the case of Secretary Federation of Bus Operators Association of Tamil Nadu vs U.D.I. (2001(134)ELT.618(Mad) is misplaced. That judgment does not concern itself with the meaning and scope of taxable entry "rent-a-cab scheme operator" but with the legislative competence of levy of that tax by Central Govt. In that judgment, there was no controversy about the meaning of the word "rent". The meaning and scope of the word "rent" in the entry "rent-a-cab scheme operator" has been rightly dealt with by the Tribunal in the case of Kuldip Singh Gill(supra).

5) The reliance placed by the Ld. Commissioner (Appeals) on a contrary judgment of the Tribunal in the case of Express Tours & Travels Pvt. Ltd. vs CCE reported in 2005(186) ELT.143 is

not correct in-as-much, as in that case, it had been found that the appellant had not produced any evidence to suggest that the cars were being actually hired by the customers and not rented.

(6) In this case the total service tax demand of Rs.6,58,403/- has been made by two show cause notices – service tax demand of Rs.1,21,511/- by show cause notice dt.8.12.04 for period from 1.4.2000 to 31.3.2004 and service tax demand of Rs.2,36,832/- for period from 1.4.2000 to 31.3.03 by show cause notice dt.2.2.05. Both the show cause notices have been issued by invoking longer limitation period of five years and both of them are time barred, as the Department was very well aware of the activities of the appellant right from Nov'2000. This is clear from the fact that the Appellant vide letter dt.20.11.2000 to the Dy. Commissioner of Central Excise, Dehradun, had intimated him about his activity of giving his taxis on hire and had also emphasized that his activity is not covered by rent-a-cab scheme and does not attract any service tax and the Department acknowledging this letter had asked him vide letter dt.30.11.2000 to obtain service tax registration and pay service tax on the gross amount received by the client. From this correspondence between the Appellant and the Revenue, it is clear that the Revenue since Nov., 2000 was aware of the Appellant's activity and therefore, the Appellant cannot be accused of willful suppression of fact with intent to evade the

payment of service tax. For the same reason, penalty on the Appellant is unwarranted.

2.2 Shri A.K. Madan, the learned Departmental Representative made the following submissions:-

(1) Tribunal's decision in case of **Kuldeep Singh Gill vs. CCE, Jalandhar** reported in **2006 (3) S.T.R. 6 & 9** is not applicable to the facts of this case, as in that case, Matadors and Minibus had been hired.

(2) It is the Tribunal's judgment in case of **Express Tours & Travels Pvt. Ltd. vs. CCE, Vadodara** reported in **2005 (186) E.L.T. 143** which is applicable to the facts of this case. In this case, the Tribunal held that while interpreting a taxing statute, the words should be given the same meaning, as understood by the persons in that trade, that there is not much of difference between the word 'rent' and the word 'hire' and that the Government's intention is to tax the provider of services which involves hiring/renting of a cab formally for a longer duration.

(3) Longer limitation period of five years under proviso to Section 73 (1) has been correctly involved, as no returns had been filed by the Appellant.

3. We have carefully considered the submissions from both the sides. The point of dispute in this case is whether giving cabs on higher on demand basis, for which the charges from the client are made on the basis of per k.m. rate, is covered by the definition of rent-a-cab scheme operators service, as defined under Section 65 (91) of the Finance Act,

1994. The period of dispute is from 01/04/2000 to 31/03/04. According to the Appellant, the very words – 'rent a cab scheme operator' suggest that the owner of the cab temporarily parts with the possession of the vehicle for a consideration and during the period renting, the vehicle is at the disposal of his client and that this scheme would not cover when the service being provided to a client is a pure transport service for which the vehicle is given on demand and the billing is done on the basis of per k.m. rate and at no point of time the vehicle is under the control of the client. The Revenue's contention, relying upon the Tribunal's decision in case of **Express Tours and Travels Pvt. Ltd.** (supra) is that the Government's intention is to tax the provider of a service which involves hiring and renting of cabs formally for a longer period and that the Appellant's activity would be covered by the definition of rent a cab scheme operator's service.

4. Rent a cab scheme operator's service had been brought within the service tax net in the year 1997 and at that time the expression "rent a cab scheme operator" had been defined in Section 65 (32) of the Finance Act, 1944, as a person who is holder of a licence under rent a cab scheme, 1989 framed by Central Government under Motor Vehicle Act, 1988. As per rent a cab scheme 1989, a person for holding a licence for this scheme should have at least 50 motor cabs. With effect from 16/10/98, the definition of 'rent-a-cab scheme operator' was amended and as per the amended definition, 'rent a cab scheme operator' means any person engaged in the business of renting

of cabs. Thus the effect of the amendment was that any person engaged in the business of renting a cab whether or not he has a licence under Rent a cab scheme, 1989, would come under the service tax net. But after this amendment, except for doing away with the licencing requirement, the basic character of the service would not change. From the perusal of rent a cab scheme, 1989 framed by Central Government under Motor Vehicle Act, 1988, it is clear that this scheme involves giving the cabs on rent to a client and during period of renting, the vehicle is at the disposal of the client.

5. Moreover, what is taxable is the activity of renting of cabs by a rent a cab scheme operator. Ordinary meaning of the words "to rent" is allowing the use of something one owns in exchange for payment. Therefore the test for ascertaining whether an activity is covered by the entry "rent-a-cab operator's service" is as to whether it involves giving the 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, with a cap on the total run of the vehicle during the period of renting, if the cab operator also provides the fuel, and during the period of renting the vehicle is at the disposal and under the control of the client – he may use it to the maximum extent permissible or even beyond on payment of extra charges or he may not use it at all. However when a cab operator provides his cab with a driver to his client on demand for going from one place to another and charges him on per kilometer basis or a lump sum amount based on distance, as

fixed with the client and control of the vehicle always remains with the cab operator/driver, he is providing transport service and this activity would be outside the purview of the entry – 'rent a cab operator's service'.

5.1 However in this case, we find that there is no finding by the lower authority on the Appellant's claim that he is providing cabs to his clients only on demand and charges them on per kilometer basis and he is not in the business of renting of cabs. This point has to be decided by the lower authority after ascertaining the facts, for which, this matter has to be remanded to it.

6. We also find that in this case, the Appellant had informed the department about his activity as early as in November 2000 and there has been some correspondence between the Appellant and the Jurisdictional Assistant Commissioner, on this issue during the period from 2000 to 2004. In view of this, the Appellant cannot be accused of suppression of facts with intent to evade the payment of service tax, even if he did not file the service tax returns. In view of this, only the normal limitation period under Section 73 (1) of the Finance Act, 1944 would be available to the Revenue for recovery of non-paid service tax, if any.

7. We, therefore, remand this matter to Commissioner, Central Excise (Appeals) Meerut-I for – (a) denovo adjudication on the point as to whether the Appellant's activity, on the basis of the criteria laid down

in para 5. above, is covered by the definition of 'rent a cab operator's service', and (b) if so, for quantifying the demand of service tax, which would be recoverable within normal limitation period.

8. The appeal is disposed off in the above terms.

(Pronounced in open court on 15.7.08)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK