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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/356 /2006 - CU[DB] Date 20/10/2008
ST/362/06

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

To :
M/S BHAGWAN SINGH GULATI

PROP SH BHAGWAN SINGH GULATI,CHHOLA ROAD,BHOPAL(MP)
M/S BHAGWAN SINGH GULATI Appellant

Vs

C.C.E. BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/277-78/08 **CU[DB]** dated 20.06.08 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. BHOPAL

48,ADMINISTRATIVE AREA,AREA HILLS,BHOPAL.

2. Adv. / Consult Sh. Hans Raj Mutreja, Adv.
146/8 Zone-I M.P. Nagar
Bhopal.

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 - 3
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
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

17. M/s M.P. Transport Service
Prop. Sh. Charanjeet Singh Gulati
Chhola Road, Bhopal (MP)

Assistant Registrar
(Customs Appeal Branch)

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

COURT – II

SERVICE TAX APPEAL NO. 356 & 362 OF 2006

[Arising out of Order-in-Original No. 28/ST/BPL/APPL/06/355 & 43-ST/BPL/06 both dated 27.4.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

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 Departmental authorities?	

Shri Bhagwan Singh Gulati,
M/s. M.P. Transport Services — Appellants

Vs.

CCE, Bhopal — Respondent

Appearance:

Shri Hans Raj Mutreja, Advocate for the appellants,
Shri B.K. Sankhla, SDR, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 20th June, 2008

FINAL ORDER NO. 57/277-278/08 **dated** 20/6/08

Per S.S. Kang:

Heard both sides. Since common issue involved in both these appeals, they are being taken up together.

2. Appellants filed these appeals against impugned orders whereby demand of service tax was confirmed by treating the appellants as provider of tour operator service.

3. Admitted facts of the case are that the appellants are having contract carriage permit and deployed their vehicles with various manufacturers for carrying employees of the factory. Revenue is of the view that the appellants are providing services of tour operator.

4. Contention of the appellants is that they are not providing any service as tour operator as they do not have any tourist permit. Contention of the appellants is that as per definition of tour operator, during the period in dispute means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act or the Rules made thereunder. Tourist vehicle as per Motor Vehicle Act means a contract carriage constructed or

adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. Contention is that they are having contract carriage permit and not tourist permit and are not liable to pay service tax as tour operator. The appellants relied upon following decisions of the Tribuna:-

(i) CCE & C, Vadodara-II vs. Gandhi Travels – 2007 (6) SRT 430 (Tri.-Ahmd.);

(ii) Gatulal V. Patel vs. CCE, Vadodara-II – 2007 (7) STR 426 (Tri.-Ahmd.);

(iii) Prasanna Travels (P) Ltd. Vs. CCE & ST, Pune – 2007 (8) STR 34 (Tri.-Mumbai)

5. Contention of the Revenue is that the appellants are registered under Motor Vehicle Act and are having permit and as per definition of tourist vehicle it is a contract carriage constructed or adapted, equipped and maintained in accordance with such specifications as may be prescribed in this behalf. Contention is that permit is only issued in case vehicle is adapted or constructed as tourist vehicle as per Motor Vehicle Act and Rules. Contention of Revenue is that as the appellants are having contract carriage permit, therefore, presumption is that it is tourist vehicle and they are liable to pay service tax. Revenue relied upon the decision of Hon'ble Madras High Court in the case of Secty. Federn. Of Bus Operators Assn. of Tamilnadu vs. UOI, reported in 2001 (134) ELT 618 and the decision of the Tribunal in the case of Pandit Motor Service vs. CCE, Jaipur, reported in 2007 (8) STR 344 (Tri.-Del.).

6. We have gone through the decision in the case of Pandit Motor Service (supra), relied upon by the Revenue. In that case the assessee had tourist permit. Case of the assessee was that though they have tourist permit but running their vehicle as stage carriage. In these circumstances the Tribunal held the assessee liable to pay service tax. The facts of present case are different as the appellants are not having tourist permit. Hon'ble Madras High Court in the case Secy. Federn. Of Bus-Operators Assn. of T.N. vs. UOI (supra) relied upon by the Revenue held that a tourist vehicle must conform to the conditions prescribed under Rule 129 of the Central Motor Vehicles Act. Hon'ble High Court held as under:-

> "14. At this juncture, it will be seen that as per Section 2(43) of the Motor Vehicles Act, the Motor Vehicles Rules specifically provide the conditions for a vehicle being recognized as "tourist vehicle' under Section 2(43). We can conveniently refer to Rule 128 of the Motor Vehicles Rules, which provides the conditions for a tourist vehicle other than motor cabs, maxi-cab, camper's van, house trailer which a tourist vehicle shall conform to. Number of specifications are given in that rule in respect of dimensions, structure, door arrangement, ventilation, luggage space, seating arrangement, painting and furnishing, lighting, fitting and accessories, etc. In short, Rule 128 specifies the standard of comforts which are required to be there in a vehicle for being recognized as the "tourist vehicle" under the Central Motor Vehicles Rules. We have, therefore, no hesitation first to hold that the first and foremost condition for a person to be held as a 'tour operator' within the meaning of Section65(52) of the Finance Act is that he must be engaged in the business of operating tours in a 'tourist vehicle' in terms of Section 2(43) of the Motor Vehicle Act and in no other type of vehicle and, therefore, necessarily such vehicle must conform to the conditions prescribed under Rule 128 of the Central Motor Vehicles Rules."

The same view has been taken by the Tribunal in other cases relied upon by the appellants. In view of the above decision of the Hon'ble

High Court and Tribunal as the appellants are not having tourist permit, they are not liable to service tax as provider of tour operator. Impugned orders are set aside and appeals are allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 24th June, 2008
RK