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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/447-448 /2006 - CU[DB] Date 03/11/2008

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

To :
C.C.E. ROHTAK
17-P, SECTOR 1, ROHTAK.

C.C.E. ROHTAK Appellant

Vs

M/S SUPER TRAVELS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/317-18/08 **CU[DB]** dated 23.10.08 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
   M/S SUPER TRAVELS
   6, NETAJI MARKET, G.T.ROAD, PANIPAT(HR)
2. Adv. / Consult
   MR.S. K. PAHWA
   MARWAH & PAHWA, 45, ARADHANA SECTOR 13, R. K. PURAM, NEW DELHI-110066.
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. Nirdeshak 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 Paul. Travels.
    12, Netaji market
    G.T Road,
    Panipat (HR)

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Service Tax Appeal No. 447 & 448 of 2006

[Arising out of the Order-in-Appeal No. 152 and 157/NS/RTK/2006 dated 12/06/2006 passed by The Commissioner of Central Excise (Appeals), Rohtak.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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?	:

CCE, Rohtak — Appellant

Versus

M/s Super Travels]
M/s Paul Travels] — Respondent

Appearance

Shri Sunil Kumar, Authorized Representative (DR) – for the appellant.

Shri S.K. Pahwa, Advocate – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 23/10/2008.

Final Order No. 87/317-318/08 Dated : 23/10/08

Per. Rakesh Kumar :-

The issue involved in both these appeals is as to whether during the period from June 2002 to March 2005, the Appellants who were providing 47 seater semi-deluxe buses to M/s IOCL Panipat and M/s L&T Limited for conveyance of their staff from Karnal to Panipat Refinery and back, were providing "tour operator's service" within the meaning of this terms, as defined under Section 65 (52) of the Finace Act, 1994 and were liable to pay the service tax on this basis. There is no dispute about the fact that the vehicles were being operated as contract carriage but none of the buses being used had been granted "tourist permit" by the State Transport Authority under Rule 82 of the Central Motor Vehicle Rules. The CCE (Appeals) vide the impugned orders has set aside the service tax demand for the period prior to 10/09/04 on the ground that during the period prior to 10/09/04 service tax was chargeable only if a person was operating tours in a tourist vehicle covered by a permit granted under Motor Vehicle Act, 1988 and that since the appellant's vehicle were not registered as "tourist vehicle", they could not be said to have been operating tours in a tourist vehicle. It is orders of the Commissioner (Appeals) which have been challenged by the Revenue in these two appeals.

2. Heard both the sides.

2.1 Shri Sunil Kumar, the learned departmental representative pleaded that the appellants have to be treated as tour operators in view of Hon'ble Madras High Court judgment in case of **Sri Pandyan Travels vs. CCE, Chennai – II** reported in **2004 (163) E.L.T. 409 (Mad.)**, wherein the Hon'ble High Court rejecting the appellant's claim that their vehicles are not ~~being~~ 'tourist vehicle' as prescribed under Section 2 (43) of the Motor Vehicle Act and for this reason, they cannot be treated as 'tour operators', held that the contract carriage vehicles are also covered under the service tax.

2.2 Shri S.K. Pahwa, Advocate, the learned counsel on behalf of the Respondents made the following submissions :-

(1) The issue involved in this case is squarely covered by the Division Bench judgment of Hon'ble Madras High Court in case of **Secretary Federation of Bus-Operators Association of Tamil Nadu vs. Union of India** reported in **2001 (134) E.L.T. 618 (Mad.),**

wherein Hon'ble High Court in para 36 & 41 of the judgment has held that the permit contemplated under Section 65 (52) of the Finance Act thereunder need not necessarily be a tourist permit-it can be any permit granted under the Central Motor Vehicles Act on the Rules framed– the only condition being that the vehicle should be a 'tourist vehicle' within the meaning of Section 2 (43) of Motor Vehicle Act read with Rule 128 of the Central Motor Vehicles Rules and it should be used by the concerned tour operator for the purpose of tour. In this case, neither the buses used have been issued 'tourist permit' implying that the same conform to the requirement of Rule 128 of the Central Motor Vehicles Rules nor it is the Revenue's case that the vehicles conform to the definition of 'tourist vehicle' defined under Section 2 (43) of the Motor Vehicle Act, readwith Rules 128 of the Central Motor Vehicle Act.

(2) The above-mentioned judgment of the Hon'ble Madras High Court has been followed by the Tribunal in the cases of **Commissioner of Central Excise & Customs, Vadodara – II vs. Gandhi Travels** reported in **2007 (6) S.T.R. 430 (Tri. – Ahmd.)** and **Gatulal V. Patel vs. CCE, Vadodara – II** reported in **2007 (7) S.T.R. 426 (Tri. – Ahmd.)**.

3. We have carefully considered the submissions from both the sides. It is an admitted position that the vehicles being used for operating tours are not 'tourist vehicle', as defined under Section 2 (43) of the Motor Vehicle Act,

readwith Rules 128 of the Central Motor Vehicle Rules. Therefore, in view of Hon'ble Madras High Court's judgment in case of Secretary Federation of Bus-Operators Association of Tamil Nadu vs. Union of India (Supra), the vehicles being used by the Appellant for conveyance of their client's staff cannot be said to be tourist vehicles and hence the Appellant cannot be said to be a tour operators within the meaning of this term, as defined under Section 65 (52) of the Finance Act. We, therefore, find no infirmity in the impugned order setting aside the service tax demand for the period prior to 10/09/2004. The Revenue's appeals are dismissed.

(Operative part of the order pronounced in the open court.)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK