**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV**

**Appeal No. ST/604/2011- CU(DB)**
[Arising out of Order-in-Appeal No. 04 (DKV) ST/JPR-I/2011 dated 03.11.2016, passed by the Commissioner of Central Excise, Jaipur]

**M/s Sharma Travels** ...**Appellants**
**Vs.**

**CCE, Jaipur I** ....**Respondent**

**Appearance**:

Ms. Rinki Arora, Advocate for the Appellant
Shri Sanjay Jain,AR for the Respondent

**CORAM**:
**Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
**Hon'ble Shri V. Padmanabhan, Member (Technical)**

**Date of Hearing: 03.11.2016**
**Date of Pronouncement: 19.01.2017**

**FINAL ORDER NO. 50431/2016-CU(DB)**

**Per V. Padmanabhan**

The appeal is directed against the Order-In-Appeal dated 04.01.2011 passed by the Commissioner (Appeals), Jaipur. The appellant is registered for payment of Service Tax under the category of "Tour Operator Services" classifiable under Section 65(105)(n) of the Finance Act, 1994. They were also engaged in providing other taxable services, viz. "Business Auxiliary Services" and "Courier Services". Investigation was undertaken by Revenue on an allegation that they have not paid Service Tax on taxable receipts during the period 2003-04 to 2006-07 and has not filed any ST/3 returns from the second half of 2005-06. On completion of investigation, a Show Cause Notice dated 23.10.2008 was issued. After the due process of adjudication the Original Adjudicating Authority, vide Order dated 29.12.2009, confirmed the demand of Service Tax to the tune of Rs 21,69,733/- along with payment of interest and penalties under various Sections. When the issue was challenged in appeal, the Commissioner (Appeals), vide the impugned order, upheld the order of the Original authority. Hence, the present appeal.

2. With the above background, we heard Ms. Rinki Arora, ld. Advocate for the appellants, as well as Shri Sanjay Jain, ld. Departmental Representative for the Revenue.

3. The ld. counsel for the appellants submits that out of the total demand confirmed, demand to the tune of around Rs 15 lakhs has been confirmed under the category of "Tour Operator Services" for the period 2003-04 to 2006-07.

(i) She submitted that the appellant was operating buses under the contract carriage permits issued by the transport authority. They were providing service from one point to another point as a stage carriage within the state. Such point to point services were not covered under the definition of Tour Operator Service till 11.05.2008, when the definition was amended and enlarged to include such cases. She also submitted that the case is covered in their favour by the decision of the Tribunal in the case of **Patel Tour and Travels reported as 2010(20 STR 698)( Tribunal Ahmedabad)**.

(ii) Demand has been confirmed to the tune of Rs 4.58 lakhs under the category of courier agency service. The activity undertaken by them was by way of providing the top of the bus on hire on fixed charges to the transporter. This enabled the transporters to undertake point to point transportation of packages and collect appropriate charges. Therefore, she submitted that this does not come within the definition of "Courier Agency Services".

(iii) An amount of Rs 1.5 lakhs has been demanded towards Service Tax under the category of "Business Auxiliary Service". Such Service Tax demand has been raised on the income earned by way of commission from issuing tickets for travel in their buses as well as in respect of other operators.

4. Ld. Departmental Representative reiterates the orders by the authorities below.

5. The major portion of the demand has been confirmed under the category of "Tour Operator Services". The appellant is engaged in running bus service from point to point as a stage carriage. The buses admittedly had contract carriage permit. The Service Tax demand has been raised by Revenue by taking the view that such point to point services are covered within the definition of "Tour Operator Services" during the disputed period. Accordingly, the Service Tax demand has been made. We note that the definition of "Tour Operator" has undergone amendments from time to time. The service was first introduced in 01.04.2000 and subsequently amended in succeeding budgets. The scope of the service has been

enlarged only with effect from 11.05.2008 to include journey from one place to another in a contract carriage permit.

6. We find that the levy of Service Tax on such contract carriage under "Tour Operator" has been settled in a number of cases in favour of appellant. In the decision, in the case of **Patel Tours & Travels (Supra) Tribunal** has held as follows.

> 7.1 We have perused the 'charging section' as well as the definition of 'tour operator' under Section 65(52) ibid. From the definition of 'Tour Operator Service', it appears that to bring a person to the fold of 'tour operator service', the person should have been engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988. The definition has three important ingredients. Firstly, a person must have been engaged in the business of operating tours. The second ingredient is that tour must be conducted using a tourist vehicle. The third ingredient is that the vehicles must have been under the grant of the permit under Motor Vehicles Act to conduct tourism business. The learned Commissioner has rightly observed that merely because the bus has the permit under 'contract carriage', it does not become the tourist vehicle. The endeavour of the Revenue had been to show that these buses were tourist vehicle since they were issued with contract carriage permit. The ground taken in the appeal was considered by the learned Commissioner while deciding the case. The Revenue could not produce any evidence that the findings of the learned Commissioner suffers from any infirmity.
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> 7.2 The learned Counsel has brought to our notice that this Bench of the Tribunal has already decided this issue in the case of Ghanshyam Travels (supra) in favour of the assessee, wherein it was held that unless the vehicle of the contract carriage permit holder fulfills the requirement as mentioned in Central Motor Vehicles Rules of a "tourist vehicle", merely because he is holding the contract carriage permit, he does not become liable to tour operator service. The similar and consistent view has been taken by this Tribunal in the case of Gatulal V. Patel (supra) and Gandhi Travels (supra) which has been affirmed by the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise, Vododara-II v. Gandhi Travels- 2009 (13) S.T.R 597 (Guj.). In his rejoinder, the learned JDR has submitted that the decision in the case of Gatulal V. Patel v. Commissioner of Central Excise, Vadodara-2007 (7) S.T.R. 426 (Tri.- Ahd.) has not been accepted by the department and department has preferred the appeals against them. However, they failed to show that there is any stay or modification in case of the said decision. Thus the appeal is bereft of merit.
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> 7.3 In the result, we uphold the impugned order and dismiss the appeal filed by the Revenue.

7. We find that the decision is squarely applicable to the facts of the present case. The demand within case is for the period prior to 11.05.2008 and hence the demand cannot be sustained and is required to be set aside.

8. Demand for Service Tax has been made under the category of "Courier Agency Service" for the amount collected by the appellant by way of hiring bus top for carrying luggage. "Courier Agency" has been defined under Section 65(33) of the Finance Act, 1994 to mean, "any person engaged in the door to door transportation of time sensitive documents, goods or articles utilizing the service of a person either directly or indirectly, to carry or accompany such documents, goods or articles".

The activity undertaken by the appellant is only renting of space on top of buses to facilitate transportation of packages when the contract carriage moves from point to point. Such an activity cannot be covered under the definition of Courier Agency service". Consequently, the demand is required to be set aside.

9. The demand for Service Tax under the category of "Business Auxiliary Service" has been made on the commission received for booking of tickets. However, we observe that "Business Auxiliary Service" comprises of a set of services. It is important to classify the activity under the specific sub clause before confirming the demand. We find that the same has not

been done. In the Tribunal's decision in the case of **United Telecom Ltd in report in 2011 (21 STR 234) ( Tribunal Bangalore)**, the Tribunal has held that Service Tax liability cannot be confirmed without mentioning the specific sub clause under which the activities are covered. The decision is squarely applicable to the facts of the present case and hence we find that the demand for service tax cannot be sustained.

10. In view of the above, the impugned order is set aside and appeal allowed.

[Pronounced in the open Court on 19.01.2017]

**Archana Wadhwa**
**(Member Judicial)**

**V. Padmanabhan**
**(Member Technical)**

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