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. III

DATE OF HEARING : 23/03/2017.
DATE OF DECISION : 05/04/2017.

Service Tax Appeal No. 57912 of 2013

[Arising out of the Order-in-Appeal No. 32 (ST)/RPR-I/2013 dated 06/03/2013 passed by The Commissioner (Appeals – I), Central Excise, Raipur.]

CCE, Raipur — Appellant

Versus

Shri Rajesh Tiwari]
M/s Tiwari Tour and Travels] — Respondent

Appearance

Shri Ranjan Khanna, Authorized Representative (DR) – for the appellant.

Shri Abhishek Mishra, Advocate – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52692/2017 Dated : 05/04/2017

Per. B. Ravichandran :-

The Revenue is in appeal against order dated 06/03/2013 of Commissioner (Appeals), Raipur. The respondent was engaged in providing bus service for transporting staff of M/s SKS Ispat and Power Ltd., Raipur in terms of the contract entered into with them. The schedule of place and timings of operation, to pick up the staff and to drop them in the factory, vice-versa, are decided by the client company. The Revenue entertained a view that such activity of transporting persons by providing bus will be covered under the taxable activity of "tour operator service" liable to service tax in terms of the provisions of Finance Act, 1994. Proceedings initiated against the respondent to demand service tax, resulted in the original order dated 25/01/2012. The Original Authority confirmed the service tax demand of Rs. 12,45,899/- and imposed equal amount of penalty under Section 78 and further penalties under Section 76 and 77 of the Finance Act, 1994. On appeal, vide the impugned order, the Commissioner (Appeals) set aside the original order and allowed the appeal. The Revenue is aggrieved by this order and preferred this appeal.

2. We have heard Shri Ranjan Khanna, learned AR for Revenue and Shri Abhishek Mishra, learned Counsel for the respondent. We have also examined the appeal records, carefully

3. The respondent was engaged in providing 35 seater mini-buses for transportation of staff of M/s SKS Ispat and Power Ltd. from Raipur to the factory site and vice-versa. We have perused the contract dated 27/02/2006. The scope of the work as per contract is that the respondent should provide mini-bus to the client company for transport of employees from Raipur to plant site and back and/or any other routs/destination fixed by the client company. A monthly fixed hire charge, per mini-bus, is agreed upon. The buses should report as per time office

schedule. The timing of the travel and designated route are as per the decision of the client company.

4. The statutory provision relevant to the present dispute are as below :-

> "(i) *The taxable service in relation to Tour Operator Service as defined in Section 65 (105) (n) of the Finance Act, 1994 is as under :-*
>
> > *"taxable service" means any service provided or to be provided, to any person by a tour operator in relation to a tour.*
>
> *(ii) Tour operator has been defined in Section 65 (115) of the Finance Act, 1994 which states as under :-*
>
> > *"tour operator" means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder.*
> >
> > ***Explanation**. – For the purposes of this clause, the expression "tour" does not include a journey organized or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field ;"*

5. The impugned order examined the scope of activities performed by the respondent and the applicable statutory provisions before arriving at the conclusion about their tax

liability. The observations of the leaned Commissioner (Appeals) are as below :-

> "5.3 In the instant case the appellant has entered in to agreement dated 27/02/2006 with M/s SKS Ispat & Power Ltd., Raipur, to provide buses on rent for convenience of the staff on contract basis. From the facts of the case it is noticed that the appellant was providing bus service for carrying staff/personnels from different stops to the factory of M/s SKS Ispat & Power Ltd., Raipur and transporting of staff from their respective residence to factory and back. The schedule of place and time of picking the staff from their respective residence has been provided by M/s SKS Ispat & Power Ltd., Raipur. For such work, the appellant had not engaged itself in the planning, scheduling, organizing or arranging of such tour and no tourist vehicle has been engaged. The work of the appellant is only to pick the staff from their respective residence on specified time schedule, as provided by M/s SKS Ispat & Power Ltd., Raipur. Transporting of employee from their residence to factory and back is not covers under the purview of Tour Operator service w.e.f. 10/09/2004 as this does not involves any activity in relation to planning, scheduling, organizing or arranging tours. From the documents issued by Regional Transport Authority Raipur on dated 06/03/2010, 01/09/2009, 01/12/2009, 30/05/2009, 03/03/2009, 04/12/2008, 29/08/2008, 06/06/2008, 04/03/2008 in favour of the appellant reveals that permission has been granted to the appellant to run the vehicles as 'city bus service' inside Raipur city, not as tourist vehicles. No permission has been granted by the Regional Transport Authority as tourist vehicles. Further department has also not submitted any tangible evidences that the appellant's vehicles are tourist vehicles registered under Motor Vehicle Act granting permission or license for

tourist purpose. Also transport of staff from different places to common destination i.e. factory premises were not appeared to be planned, scheduled, organized and arrangement of tours using the buses of the appellant. Thus from the above facts and circumstances I arrived to the conclusion that Vehicles used merely for transporting company staff cannot be treated as Tourist vehicles. As such the demand of service tax under head 'Tour Operator Service' for the period from 14/01/2005 to 31/12/2009 is not sustainable on merits. Held accordingly".

6. The learned Commissioner (Appeals) further relied on the decision of the Tribunal in **T.N. State Trans. Corpn. (KUMBAKONAM) LTD. vs. CCE, Trichy** reported in **2009 (14) S.T.R. 760 (Tri. – Chennai)** and **Remanan Travels vs. CST, Cochin** reported in **2010 (19) S.T.R. 83 (Tri. – Bang.)**.

7. We note that in the appeal the Revenue contended that the impugned order has erred in not considering and appreciating the fact that transportation of staff from different places to a common destination as per plan, schedule and arrangement should be considered as a tour. The buses of the respondent are plying from one point to another on contract basis and the service receiver is paying a consolidated amount. During the relevant period, the definition for tour operator clearly covered person engaged in business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988. The 'tourist vehicle' covers 'contract carriage' constructed or adopted and equipped and maintained in accordance with such

specifications as may be prescribed in this behalf. The Revenue further contended that the favourable judgments of the Tribunal against service tax levy were not accepted by the Department and appeals have been filed and, hence, the issue has not reached in the finality. We note that the reasoning adopted by the Commissioner (Appeals) is clearly supported by the legal provisions and decided case law on the subject. In fact, apart from the cases relied upon in the impugned order, the Tribunal in the case of **Capricorn Transways Pvt. Ltd. vs. CCE, Raigad** reported in **2015 (37) S.T.R. 1027 (Tri. – Mumbai)** held when the vehicle, in question, are not tourist vehicle and are only contract carriage buses not holding tourist permit, no liability to service tax will arise. It was further observed that the assessee is providing buses at fixed charges and the schedule of operation is as per the instruction of the client company. There is no scope to tax such activity under a tour operator service. Reliance was placed on the Circular dated 17/09/2004 issued by the Board.

8. We further note that the reliance placed by Revenue on the decision of Hon'ble Madras High Court in the case of **Secretary Federation of Bus Operators Association of Tamilnadu** reported in **2001 (134) E.L.T. 618 (Mad.)** is not relevant and appropriate. In the said case, the Hon'ble High Court held that vehicle which answers the description of the tourist vehicle under Rule 128 and which runs on contract would become a 'tourist vehicle' and in such situation a person engaged in the business of operating tours is liable to service tax. We note as clearly

clarified by the board in the circular dated 17/09/2004. The respondent herein was not engaged in planning, scheduling, organizing or arranging tours. They only provided buses on fixed charges for transportation of staff as per the schedule and timing decided by the client company. In such situation, we find that there can be no liability of service tax under the category of tour operator service on the respondent. There is no merit in the appeal filed by the Revenue. Accordingly, the same is dismissed.

(Order pronounced in open court on 05/04/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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