IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:13.04.2017
Date of Decision: 25.04.2017

Service Tax Appeal No.50997/2014

[Arising out of Order-in-Appeal No.315(OPD)ST/JPR-II/2013 dated 31.10.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur]

M/s.Sonia Travels Appellants

Vs.

CCE & ST, Jaipur-I Respondent

Appearance:
Rep. by Shri Sunil Kumar Gupta, Advocate for the appellant
Rep. by Shri Ranjan Khanna, DR for the respondent.

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

Final Order No. 53079/2017

Per B. Ravichandran:-

The appeal is against order dated 31.10.2013 of Commissioner (Appeals), Jaipur-II. The appellants are engaged in providing motor vehicles on hire basis to their customers. The dispute in the present appeal relates to their tax liability under the category of "rent-a-cab operator service". This is second round of litigation. On the first round, when the matter reached the Tribunal, in an appeal filed by the appellant, against adverse order of the lower authorities, confirming service tax liability of Rs.2,63,936/-, the Tribunal remanded the matter to the Original Authority to decide the case afresh after considering the decision of the Tribunal in **R.S. Travels – 2008 (12) STR 27 (Tribunal-Delhi).** The Tribunal directed the

Original Authority to decide the case afresh following the principles of natural justice and also to examine the question of time bar as well as the ratio of the decision of the Tribunal in **R.S. Travels (supra).**

2. The Original Authority vide order dated 2.5.2011 examined the case afresh and held as below:-

> "13. Now, I take the issue whether the appellant's case is covered under the Tribunal's decision in the case of M/s.R.S. Travels. The appellant in various communications i.e. in reply to the show cause notice, in appeal before the Commissioner (Appeals), Jaipur-II and before the Hon'ble Tribunal also, they have been stating that the taxis are not rented as such for a period of time but persons are transported from one place to another and the amount was charged accordingly for the distance travelled as shown in the milo-meter of respective taxis on the agreed rate per kilometer. He also contended therein that the bills raised are still with the department which clearly shows that the charges were for distance travelled only on per kilometer basis and that no bill is on record to show that the charges were for providing vehicle on rent to client for certain period of time whether or not the vehicle moves for short or longer distance. This argument of the appellant has not been challenged. The show cause notice has also been seen. The notice describes the definition of the Rent a cab as "the person who provides cab against payment on the basis of duration and distance of use. In para-4 of the order-in-original in sub-para(i) the order clearly states appellant's contention that the taxis are not rented as such for a period of time but persons are transported from one place to another on hire basis and charged depending upon the distance traveled. The bills issued by the appellants are with the department, which clearly transpire it. As

per bills, the appellant has charged from the client as per agreed tariff the amount for the number of kilometers run. In some cases lump sum amount for a journey to and fro has been charged. The vehicles were not rented out to them but the clients were transported from one place to another and the charges were claimed on the basis of distance traveled. The vehicles were not parted with and were not in the control of client. The Hon'ble Tribunal's judgement in the case of M/s.R.S. Tavels (para 5 thereof) is squarely applicable to the appellant as he provided vehicle with a driver to his client on demand for travelling from one place to another and charged him on per kilometer basis and also lump sum amount based on distance, as fixed with the client and the control of the vehicle was not parted with. This activity as per Hon'ble Tribunal's order is outside the purview of the entry 'rent a cab operator's service as the appellant is providing vehicles to his clients only on demand and charges them on per kilometer basis and he is not in the business of renting of cabs. Apart from above Tribunal's order in the case of M/s. R.S. Travels, additionally Board's letter F.No.381/145/2005 dated 6.6.2006 (2006(3) STR C-11) (15.08.2006) at para 17.13 states that 'rent-a-cab does not cover metered taxi or radio taxis, which are not rented as such for a period of time, but are for transportation from one place to another". The appellant is covered under the aforesaid principle and is also covered under Board's circular and that the appellant is not to be treated as rent a cab operator as he merely transported persons from one place to another on payment as per kilometers run in taxis. There is no difference between vehicles plying in inter city or intra city which charges on the basis of distance on per kilometer basis. The principle governing the service provided is important. In case the vehicles are given for a period of time and at the disposal of the client, the services are covered under Rent-a-Cab scheme and where the services are provided for transportation of persons

> from one place to another and charges are made on the basis of per kilometer basis, the services do not fall under the taxable net of 'Rent-a-Cab' services."

3. The Revenue preferred an appeal against the original order and the Commissioner (Appeals) vide the impugned order reversed the decision. He held that the appellant had provided cabs to industrial companies such as M/s. Shree Cements and to hotels, on regular basis as seen from the bills. It was noted that the cabs are placed at the disposal of their regular clients for use on long term basis, where, even effective control remains with them. It is in the nature of hiring out that determines the tax liability and not the method of charging rent, which can be per k.m. per day or per month. Hence, the Commissioner (Appeals) held that the adjudicating authority has not properly appreciated the facts in dropping the demand.

4. Ld. Counsel for the appellant submits that the ratio of the decision of the Tribunal in **R.S. Travels (supra)** is squarely applicable to the facts of the present case. The decision of the Tribunal in **R.S. Travels (supra)** has been upheld by the Hon'ble Uttrakhand High Court reported in **2015 (38) STR 3 (UK).** In fact, the original order was challenged by the Revenue only on the ground that the decision of the Tribunal in **R.S. Travels (supra)** was not accepted by the Department and the appeal has been filed before the Uttrakhand High Court. Ld. Counsel submits that the Tribunal in large number of cases followed the decision in **R.S. Travels (supra)**. The lower authorities are bound to follow the ratio. It is contended that the impugned order fell in error, in recording that the appellants have placed taxis at the disposal of their clients (hotels, factories). The fact remains that the appellants provided transportation from one place to another, charged according to

the distance. The bills clearly show that the taxis were not rented out but the charges are collected based on the distance travelled. Ld. Counsel submitted various specimen copies of the bills raised by the appellants.

5. Ld. AR reiterated the findings of the Commissioner (Appeals).

6. We have heard both the sides and perused the appeal records.

7. We have noted the findings recorded by the lower authorities on the remand direction by the Tribunal. The Original Authority held that the decision of the Tribunal in **R.S. Travels (supra)** is squarely applicable to the facts of the case and also relied on the Board's Circular dated 15.08.2006. We note that the appeal by the Revenue against the said de novo order is mainly on the ground that the Tribunal's order is not acceptable to the Revenue and an appeal has been filed in the Hon'ble Uttrakhand High Court against the said order. Further, we note that the appeal also mentions the CESTAT's order being not correct. We find that based on such grounds of appeal, the Commissioner (Appeals) reversed the findings of the original authority. On perusal of the reasons recorded by the impugned order, we find that the distinction made by the Commissioner (Appeals) is without merit. In fact, unsupported factual assertions have been made by the Commissioner (Appeals) like placing the cabs at the disposal of the clients and passing the effective control to the clients. We find no basis for such assertion. In any case, the decision of the Tribunal in **R.S. Travels (supra)** has been affirmed by the Hon'ble Uttrakhand High Court as recorded above. The Original Authority examined the factual details of the case and held that the decision of the Tribunal in **R.S. Travels (supra)** is squarely applicable to the present case. The impugned order did not bring out any factual or legal infirmity in the said findings. Having gone

through the appeal records, we are in agreement with the reasonings recorded by the Original Authority and accordingly, set aside the impugned order. The appeal is allowed.

(Pronounced on 25.04.2017)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp