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

Service Tax Appeal No. 442 of 2012

[Arising out of Order-In-original No. 3/2012 (ST) dated 10.1.2012 passed by Commissioner of Central Excise, Jaipur]

M/s. Rajasthan Tourism Development Corpn. Ltd. — **Appellants**

Vs.

Commissioner of Central Excise, Jaipur I — **Respondent**

Appearance:

Shri Jatin Mahajan, Advocate for the Appellants
Ms. Neha Garg, DR for the Respondent

<u>CORAM</u>:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing : 25.05.2017
Date of Decision : 04.07.2017

FINAL ORDER NO . 54546 /2017

<u>Per V Padmanabhan</u>:

The appellant is a Govt. company having 100% share holding of State of Rajasthan. The main activity of the appellant is to develop tourism and infrastructure activities in the State of Rajasthan. They have introduced railway transport by the name & style of “Palace on Wheels” and “Royal Rajasthan on Wheels”, to develop the tourism in Rajasthan for people coming from abroad and outside State. They have entered into an agreement with various emporia/shops which come in the way of the journey on the said two trains, for stopping the trains before the said shops to facilitate the passengers to do shopping, etc. The appellant charge a facilitation fee for the said purpose.

2. The Revenue entertained a view that the amount received by the appellant in the name of "facilitation fee", is commission from various shops and emporia for providing services of promoting or marketing or selling of goods provided or belonging to the emporia/shops, is liable to Service Tax under the category of 'Business Auxiliary Service' in terms of clause 19(i) of Section 65 of Finance Act, 1994. Accordingly proceedings were initiated against the appellant for confirmation of demand of Service Tax in respect of commission received by them within the period April, 2005 to March, 2010, by way of raising a show cause notice (SCN) dated 20-10-2010. The said SCN stands culminated into an impugned order passed by Commissioner.

3. The appellant's contention is that they are a State Govt. owned unit and their main business is for promotion of tourism. Looking into the popularity of the concept of spending seven days and nights on the said trains, the appellant made a policy by way of agreement to float a tender based upon certain terms & conditions. The showroom owners accepted the terms & conditions and made an offer fulfilling the financial as well as technical bid and after scrutiny and selection by the company, they were awarded tender. On account of goodwill of the said trains, the company fetched a good amount from emporia owners. The said activity cannot be held to be activity falling under the category of 'Business Auxiliary Service'. The appellants have also challenged the impugned order on limitation.

4. On the other hand, it is the Revenue's contention that by stopping the trains at the emporia/shops, the appellants have promoted the marketing of the said shops for which they are recovering facilitation fee from them. In terms of definition of 'Business Auxiliary Services', promoting or marketing or selling of goods produced or provided by or belonging to the client are covered under the definition of the said service. Inasmuch as admittedly, the appellants are promoting sale of goods by the said emporia/shops, for which they are getting facilitation fee, *i.e.*, "commission", it is nothing but 'Business Auxiliary Service'.

5. In the above background, we have heard Shri Jatin Mahajan, learned advocate for the appellant and Ms. Neha Garg, learned DR for the Revenue.

6. Learned advocate submitted copy of the agreement entered into by the appellant with various Emporia and submitted that the responsibility of the appellant is only for stoppage of buses at the approved emporium and there is no guarantee that the guest will make purchases from the said emporium. Accordingly, he submitted that the activity will not be covered within the definition of 'Business Auxiliary Service'. He further submitted that the appellant is a Rajasthan State Government Undertaking and in the absence of any positive ingredient in the show cause notice, the demand will be hit by limitation.

7. Learned DR submitted that the activity is covered within the definition of promotion or marketing or selling of goods belonging to the client which falls within the definition of 'Business Auxiliary Service'. Consequently, she prays for upholding the impugned order.

8. The definition of Business Auxiliary Service is reproduced below for ready reference:

"Business Auxiliary Service" means any service in relation to, -

(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client or

(ii) ……..

9. The scope of definition as above is very wide and it covers all activities which promote business of the clients. In terms of agreement entered into by the appellant with the Customers, they undertake to stop the bus carrying the guests in front of the Emporia which have signed the agreement with the appellant. From this, it is evident that the basic objective of the agreement was to provide potential customers to the Emporia which were empanelled with the appellant even though there is no assurance that the guests will make purchases from the Emporium. It is clear that the appellant, by the act of stopping the buses only in front of contracted emporium and not in front of others, engaged in providing customers to the emporium resulting in promotion of sales. This is clearly in the nature of promoting the sales of goods belonging to the clients and facilitation fee received by the appellant from the emporium is nothing but in the nature of commission received for providing such services.

10. In view of the above, the activity of the appellant is covered by the definition of 'Business Auxiliary Service' leviable to service tax.

11. The appellant has advanced the arguments and strongly contended that the demand is hit by time bar in the absence of any positive evidence enumerated in the show cause notice. The show cause notice dated 20.10.2010 has been issued covering the demand

for the period April, 2005 to March, 2010. The only reason cited in the show cause notice and the impugned order for invoking the extended time limitation under section 73 for demand of service tax is that the appellant has failed to take registration in the category of 'Business Auxiliary Service' and have failed to file the periodic ST 3 returns.

In this regard, we note that the definition of 'Business Auxiliary Service' was expanded and made much more wide with effect from 10.9.04. The appellant was already paying service tax under various categories and separate litigation was there whether the activity undertaken by the appellant is covered within the definition of 'tour operators'. It is further on record that the appellant has been subjected to periodical audit repeatedly both by the the department as well as statutory audit by CAG. It is further on record that the appellant is a State Government undertaking which can have no intention to deliberately evade payment of service tax. In view of the above, we are of the view that the demand made in the show cause notice has to be restricted to that falling within the normal time limit under section 73.

Demands falling beyond this time period is liable to be set aside.

12. In view of the above discussions, the activity undertaken by the appellant is held to be classifiable under 'Business Auxiliary Service' and liable to Service tax. Demand of service tax is sustained within the normal period of limitation and set aside for the period beyond it. The case is remanded to the original adjudicating authority for requantification of the demand falling within the normal time limit.

(pronounced in the open court on 04.07.2017)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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