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

Date of Hearing/Decision:10.11.2017

Service Tax Appeal No.420/2011-DB

[Arising out of Order-in-Appeal No.503(CB)ST/JPR-II/2010 dated 13.12.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur-II]

M/s.Pandit Motors Services Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

Rep. by Sh. Alok Kumar, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, AR for the respondent.

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

Final Order No.58095/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 13.12.2010 passed by the Commissioner (Appeals), Central Excise, Jaipur-II, wherein the adjudication order was upheld holding that booking of luggage on behalf of the bus owners is a taxable service under the category of "Business Auxiliary Service" defined under Section 65(19) of the Finance Act, 1994.

2. Ld. Advocate appearing for the appellant submits that show cause notice has not mentioned the specific head under which the service is taxable under the "Business Auxiliary Service". It is his submission that in absence of specific mention of the clause in the show cause notice, the demand cannot be confirmed

against the appellant. It is further submitted that the commission on account of booking of luggage should only be subjected to levy of service tax and the entire amount collected from the customers, which were paid on to the bus owners.will not be considered for the purpose of computation of the service tax liability.

3. On the contrary, ld. AR appearing for the Revenue reiterates the findings of the Commissioner (Appeals) recorded in the impugned order .

4. Heard both the sides and perused the case records.

5. In this case, the appellant is booking the luggage on behalf of the bus owners. Since the bus owners are clients of the appellant, on whose behalf booking of luggage was made, the same should fall under the taxable category of “Business Auxiliary Service”. Regarding particular clause of the said taxable service, under which the service should be categorized, the adjudication order has categorically held that the activities provided by the appellant should fall under the sub-clause (vi) of the definition of “Business Auxiliary Service”. Since the authorities below have confirmed the service tax demand under sub-clause (vi) of the definition of “Business Auxiliary Service”, under which the activity provided by the appellant is squarely covered, we do not find any merit in the submission of the appellant that specific clause was not mentioned in the show cause notice and accordingly, no service tax demand can be confirmed against it. With regard to the submission of the appellant that the service tax should be levied on the actual commission earned by the appellant, we find that neither there is any agreement, of

any correspondence exchanged between the appellant and the bus owners providing for the actual commission payable to the appellant for providing such service. Thus, in absence of any documentary evidence, the plea raised by the appellant cannot be accepted.

6. Therefore, we do not find any infirmity in the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.