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

Date of Hearing:11.12.2017
Date of Decision:03.01.2018

Service Tax Appeal No.1259/2011 (DB)

[Arising out of Order-in-Appeal No.133/ST/DLH/2011 dated 6.5.2011 passed by the Commissioner (Appeals), Service Tax, New Delhi]

CST, Delhi Appellant

Vs.

M/s.JD Transporters Respondent

Appearance:

Rep. by Ms. Neha Garg, AR for the appellant.
Rep. by Shri A.K. Batra, CA and Ms. Vibha Narang, Advocate for the respondent.

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

Final Order No.50045/2018

Per B. Ravichandran:

The Revenue is in appeal against the order dated 6.5.2011 of Commissioner (Appeals), Central Excise, Delhi-I. In the said order, the Commissioner (Appeals) held that the respondents were giving buses on hire to Rajasthan State Road Transport Corporation (RSRTC), who were using the same for public transport. He held that mere renting of buses by the respondent to RSRTC without provision of any service in relation to renting of such bus did not attract service tax under the category of "Rent-a-cab scheme operator'.

2. Ld. AR elaborating the grounds of appeal submitted that in terms of Section 65(79) of the Finance Act, 1994, any person engaged any business of renting of cab is liable to service tax. Reliance placed by the Commissioner (Appeals) on

certain decided cases is not relevant as those cases dealt with renting of immovable property and supply of tangible goods.

3. Ld. Counsel for the respondent submitted that the respondent have provided three Volvo buses on contract basis to RSRTC. They have transferred effective control and possession of buses to RSRTC for a period of 3 ½ years. The buses are operated by RSRTC only. RSRTC is liable to pay road tax, permit fee, stand fee, toll tax and other fee and taxes. The respondent did not have any transport permit. Such supply of buses on hire are covered by the provisions of Article 366 (29A) (d) of the Constitution of India . There is no service for tax under Finance Act, 1994. He relied on the various decided cases in support of his submission.

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

5. The impugned order examined the terms of agreement and elaborately discussed the scope of transaction under the legal provisions applicable in the present case. We note that in the present appeal the Revenue did not at all mention any legal or factual ground to contest the finding recorded by the Commissioner (Appeals). The appeal itself is very brief and with no discussion of the contractual terms and grounds on which the impugned order was found faulty. We note that the various clauses of the agreement have been reproduced and analysed in the impugned order. It is clear that the buses provided by the respondent were in full control and operation by the RSRTC. The usage of the bus, manner of travel, schedule, etc. is fully in control of RSRTC. It is an admitted fact that the respondent do not possess any permit from Road Transport Authorities for plying their buses for public. Such permits are obtained by RSRTC and they operate the buses hired from the respondent in the manner as prescribed in the permit. We are

in agreement with the impugned order to the effect that the respondent transferred the property (buses) to RSRTC, who enjoyed the full control on the said buses. There is no service, which can be taxed under 'rent-a-cab service operator' on the respondent. We have also perused the various decisions cited by the impugned order to arrive at such conclusion. We also further refer to the decision of the Tribunal in **APSRTC-KADAPA – 2017-TIOL-4420 –CESTAT-HYDERABAD** on similar disputes. When there is only a contract to hire and there is no renting of cab, there is no question of assessee being subjected to tax in respect of services rendered in connection with 'rent-a-cab service'. We find that the Tribunal followed the said ratio in other decisions also.

6. In view of the above discussions and analysis, we note that the Revenue did not bring out any sustainable legal issue in the present appeal. Accordingly, there is no reason for us to interfere with the impugned order. The appeal is dismissed.

[Order pronounced on 03.01.2018]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.