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

Service Tax Appeal No. 57289 of 2013

[Arising out of Order-in-Appeal No. 7 (ST) RPR-I/2013 dated 30.01.2013 passed by the Commissioner (Appeals I) Central Excise Raipur (CG)]

Commissioner of Central Excise Raipur **Appellant**

Vs.

TOU Transport Company **Respondent**

Appearance:

Shri Ranjan Khanna, DR for the Appellants
None for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing/ Decision: 1.1.2018

FINAL ORDER NO. 50100 /2018

Per: B Ravichandaran:

The Revenue is aggrieved by the order dated 30.1.2013 of Commissioner (Appeals), Raipur. The respondent is providing vehicle for transport of staff / officers of M/s. Monnet Ispat Ltd., Raipur, M/s. Sarda Energy and Minerals Ltd. and M/s. Chhattisgarh Electricity Company Ltd. on rental basis. Impugned order held that such serevices cannot be taxed under tour operator services. The

Commissioner (Appeals) held that the respondent cannot be considered as tour operator and transporting employee and staff of client on a regular basis to the work place and back to home cannot be considered as a tour to attract service tax levy.

2. Learned AR elaborating the grounds of appeal submitted that as per section 65(113) 'tour' is journey from one place to another irrespective of the distance. The respondent did not produce the supportive evidence to state that vehicles used are not "tourist vehicles". The definition of 'tour operator' under section 65(115) is considered wide enough to cover the respondent in the present case.

3. None is present on behalf of the respondents inspite of notice served. After hearing the learned AR and perusal of appeal record, we note that Commissioner (Appeals) holding in favour of the assessee observed that:

> *"5.4 In the instant case, the appellant has made an agreement with M/s. Monnet Ispat Ltd. Raipu, M/s. Sarda Energy & Mnerals Ld., Raipur, M/s. Chhattisgarh Electricity Company Ltd. M/s. Sarda Energy & Minerals Ltd. to provide buses on rent for convenience of the staff on contract basis. From the contract letters dated 01.07.2008 of M/s. Sarada Energy & Minerals Ltd.. With the appellant, and contract letter dated 22.12.2009 of Jayaswal Neco Industries Ltd. with the appellant dated 01.7./2008 it is noticed that the appellant was providing bus service for carrying staff personnel's from*

different stops to their factories. Further the department has 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, organised 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 Vehicle and the services rendered to various factories by the appellant falls under the category of 'Rent a cab operator service'. Held accordingly."

4. In the face of above finding, in the present appeal, revenue could not bring any sustainable ground to contradict the findings in the impugned order. We note that said statutory provision for 'tour', 'tour operator' and 'tourist vehicle' should be examined jointly within the statutory definition as envisaged in Finance Act, 1994. Thus, we do not find any reason to interfere in the impugned order. Impugned order is sustained.

5. In the result, appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member(Technical)

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