In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.ST/1809/2011 & ST/1810/2011

(Arising out of Order-in-Original No.23-24/2011 dated 31.03.2011 passed by Commissioner of ST, CE & Customs, Jaipur)

Dy Conservator of Forest & Dy Field Director …Appellant

Vs

CCE Jaipur …Respondent

Appearance:
Present for the Appellant : Shri Jatin Mahajan, Advocate
Present for the Respondent : Shri , Sanjay Jain, DR

Coram: HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR V.PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 20.03.2018
Date of decision: 11.04.2018

Final Order No.51319-51320/2018

Per V. Padmanabhan,

These two appeals are against Order-in-Original No.23-24/2011 dated 30.03.2011. The appellant comes under Department of Forests, Govt. of Rajasthan and exercised the jurisdiction and control over the Tiger Project, Ranthambore, Sawai Madhopur, Rajasthan. The Revenue noticed that the appellant was collecting certain amounts from the tourists for organizing or arranging tours into the forests on Vehicles which were allowed on specified routes. Out of the amounts so collected, a certain portion was paid to the vehicle owners towards rent of the vehicle and the balance was retained. Revenue was of the view that the activity of the appellant falls within the definition of Tour Operator as per Section 65(115) of the Finance Act, 1994. Accordingly, SCNs were issued to the appellant proposing to demand Service Tax on the amounts so collected by the appellant under the category of Tour Operator Service falling under Section 65 (105) (n) ibid. After the due process of adjudication, Service Tax was ordered to be paid along with interest and penalties under various Sections of the Finance Act,1994. Aggrieved by the impugned order, the present appeals have been filed

2. With the above background, we heard Shri Jatin Mahajan, Advocate for the appellant as well as Shri Sanjay Jain, DR.

3. The ld Advocate argued the case of the appellant and his arguments are summarized below:

i) The appellant is a Department of the Govt. of Rajasthan. He denied that the appellant was acting as a Tour Operator.

ii) Prior to 01.10.2008, the activity relating to restricting the entry of tourists as well as vehicles in Ranthambore National Park was being done by of Rajasthan Tourism Development Corporation on behalf of the Forest Department. W.e.f. 01.10.2008, the said work was being done by the Forest Department.

iii) The Forest Department was performing the sovereign function of protecting and improving the environment and to safeguard the forests and wild life of the country as mandated under article 48A of the Constitution of India. The Wild Life (Protection) Act, 1972 provides for Notification and Management of National Parks for conservation of wild life. As per the provisions of the above Act, entry of persons into the National Park is restricted and the Forest Department was obligated to carry-out the same and for this purpose, the Govt. of Rajasthan has issued notification and guidelines prescribing the fees to be charged for entry of tourists into the national park as sell as prescribing the total number of vehicles and types of vehicles allowed for entry into the national park.

iv) The above facts clearly demonstrated that the appellant department was performing its sovereign function in restricting the entry of tourists and vehicles in Ranthambore.

v) Out of the amounts recovered from the tourists towards the vehicles made available to the tourists, the department has reimbursed the entire rent to the vehicle owners and no amount as alleged is retained by them.

vi) During the period when Rajasthan Tourist Development Corporation was issuing the permit and collecting the money towards entry fees as well as vehicles, the entire amount collected was deposited with the State Govt. in appropriate head of account.

vii) The appellant department was not engaged in the activity of organizing any tour and hence were not covered within the definition of Section 65(115) of the Act.

viii) Lastly, he submitted that CBEC has clarified that charges recovered by any sovereign/public authority for carrying-out any statutory function will not be liable for Service Tax.

4. The ld DR justified the impugned order. He argued that State Forest Department had made arrangements for supply of vehicles to tourists for going around the National Park and has recovered amounts towards the same. He submitted that this activity is covered within the definition of Tour Operator and hence liable for payment of Service Tax.

5. Heard both sides and perused the record.

6. The facts of the case are that Rajasthan Department of Forests were collecting certain amounts from the tourists and making available vehicles on rent for safari tour into the Ranthambore park

7. The Revenue is of the view that the above activity is covered within the definition of Tour Operator as per Section 65 (115) of the Finance Act. 1994. For ready reference, the definition is copied below:

> The definition of 'Tour Operator' as is stood prior to 16.05.2008, as per section 65 (115) of the Act was as under:-
>
> *"Tour Operator" means any person engaged in the business of planning, scheduling, organizing or arranging tour (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of trans port, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder;*
>
> With effect from 16.05.2008, the Finance Act, 2008 has substituted the following definition for 'Tour Operator';
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> *"Tour Operator" means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or ogher similar services) by any mode of transport, and includes any person engaged in the business of operaing tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or ,the rules made thereunder.*

Explanation,__ For the purpose of this clause, the expression "tour" does not include a journey organized or arranged for use by an educational body than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field;

8. It is to be noted that the definition prior to 16.05.2008 as well as subsequent to that date is applicable to any person engaged in the business of planning, scheduling, organizing or arranging tours.

9. The main argument advanced by the appellant against such levy of Service Tax is that it is a department of the State Govt. of Rajasthan and is not engaged in the business of operator tour. It has further been submitted that all activities carried-out by the department in the Ranthambore National Park is towards discharging the constitutional mandated under Act 48A which mandated that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." It has further been argued that Wild Life (Protection) Act, 1972 and the rules made thereunder have been enacted to carry-out the above constitutional mandate and actions including restricting the entry of visitors as well as vehicles and movement of tourists in such vehicles is towards safeguarding the forests and wild life in the National Park.

10. We perused the relevant Act and rules and note that the above Act empowers the State Government, for notification of National Park as well as to restrict the entry of visitors as well as vehicles into the National Park. It is evident

that the primary objective of such restriction is to protect wild life and tourism is permitted only to the extent circumscribed by the above objectives.

11. The CBEC has issued master circular No.96/7/2007 ST dated 23.08.2007. One of the issues clarified is regarding whether the activities of sovereign/public authorities performed under the statute can be considered as provision of service, for purpose of levy of Service Tax in S.No.999.01, circular has clarified that any fee collected as per the provisions of the relevant statute for performing mandatory and statutory functions under the provisions of any law are not to be treated as services provided for consideration.

12. In the present case, we note that the amount recovered from the tourists are credited to the account of the State Govt. after reimbursing the vehicle owners towards the rent payable for such vehicles. The above activities of the appellant, are to be seen in the context of Wilde Life Protection Act as well as Rules. We are of the view that Forest Department has the mandatory duty to protect the environment and to safeguard forests and wild life. Amounts recovered by them towards issue of entry permits as well as vehicles which have also been credited to the State Treasury are to be considered in the nature of fee or amount collected as per the provisions of relevant statute for performance of statutory functions. This cannot be considered as consideration for purposes of organizing tour.

13. In view of above discussions, the Department is not justified in demanding Service Tax on the amounts collected by the appellant. The impugned order is set-aside and appeals allowed.

(Pronounced in the court on 11.04.2018)

(S.K. Mohanty)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

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