IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/1630/2011-CU[DB]

[Arising out of Order-in-Appeal No.327 (DKV) ST/JPR-I/2011 dated 04.08.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s. Kalpana Travels Pvt. Ltd. …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Ms.Priyanka Goel, Advocate
Present for the Respondent: Mr.Sanjay Jain, D.R.

**Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing/Decision: 11.10.2018

FINAL ORDER NO. 53166 /2018

PER: RACHNA GUPTA

Present is an appeal against the Order-in-Appeal No.327 dated 29.07.2011.

2. The appellants herein are the holder of Service Tax Registration for providing the service of Tour Operator Services. The Department after receiving the letter dated 07.09.2006 and 18.09.2006 from the assessee, observed that the assessee – appellant have collected the amount of taxable tour charges from the other Tour Operator namely M/s.

Dashmesh Tours & Travels, Jaipur. However, have not paid Service Tax for the said amount collected during the period w.e.f. April 2004 to April 2006. Resultantly, vide show cause notice No.4250 dated 11.10.2006, the Service Tax amounting to Rs.4,38,438/- was demanded alongwith the interest at the appropriate rate on the said amount and the proportionate penalty. The said demand was confirmed vide the Order-in-Original No.684 dated 1st February, 2011 and being aggrieved, the appeal was filed before the Commissioner (Appeals), who also confirmed the impugned demand. Resultantly, the present appeal before us.

3. We have heard Ms. Priyanka Goyel, ld. Advocate for the appellant and Mr. Sanjay Jain, ld. DR for the Department.

4. It is submitted by the appellant that the activity as done by the appellant was collecting certain amount for tour charges i.e. booking of tickets on behalf of another tour operator M/s. Dashmesh Tours & Travels. Other than that the appellant has not rendered any service as may be categorized as tour operator service for the said tour agency. The demand cannot be categorized as the tour operator services. The authority below has therefore wrongly confirmed the demand. The order is accordingly prayed to be set aside. Appeal is prayed to be allowed.

5. Ld. Counsel has relied upon the case law in their own case reported in **2009 (16) STR 444 (Tri.-Del**.) wherein the activity as the one in hand is mentioned as the activity of booking tickets for the principal and not as the tour operator.

6. While rebutting these arguments, ld. DR has mentioned that the case law as provided is not applicable to the present case and the booking of ticket activity has come into Service Tax w.e.f. 10th September, 2004 and the said judgment is prior to the said date. In addition, it is submitted that Commissioner (Appeals) has duly referred to the definition of tour operator and after thoroughly discussing the same simultaneously keeping in view that there is nothing on record produced by the appellant, despite demand, that the liability as tour operator whether or not has been discharged by M/s. Dashmesh Tours & Travels. In the absence thereof, the activity of the appellant is held as that of tour operator only. Justifying the said finding the appeal in hand is prayed to be dismissed. After the said finding the appeal in hand is prayed to be dismissed.

7. After hearing both sides, we are of the opinion that to adjudicate the impugned activity, the definition of tour operator service is relevant as is defined under Section 65 (115) of the Finance Act, 1994 (The Act hereinafter). The same reads as follows:-

> *[(115) "Tour operator" means any person engaged in the business of planning, scheduling,*

organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport and includes any person engaged in the business of operating 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 (59 of 1988) or the rules made there-under.

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

8. The perusal thereof shows that for a person to render a tour operator service it is not merely collection of the ticket booking/the tour booking charges but in addition requires planning, scheduling, organizing & arranging tours, which also includes arrangement for accommodation, site seeing and other similar services. At this stage we look at the show cause notice. The acknowledged and the alleged activity of the appellant is only the collection of the amount of taxable tour charges. There is no single allegation that the tour for which the appellants have collected amounts though on behalf of M.s M/s. Dashmesh Tours & Travels but for them appellant only was providing the remaining other activities as will conclude the collection of said charges to classify as tour operator service. In absence thereof, we hold that the adjudicating

authority below has not rightly applied the definition of tour operator to the alleged activity of the appellant.

9. The only reason that there is no evidence for the discharge of liability of tour operator service even on part of the M/s. Dashmesh Tours & Travels the same cannot be the reason to confirm the demand of tour operator service qua the assessee who apparently and admittedly is just rendering service of booking tickets. The case law as relied upon by the appellant though is for the period prior to 10th September, 2004 but clarifies that the activity of the appellant has mentioned that collection of amount for any tour is merely a booking activity. Any demand under the guise of it being tour operator is not sustainable. The booking activity demand has not been raised by the show cause notice. The law is simultaneously settled that the adjudicating authority cannot go beyond the scope of show cause notice. Seen from any angle, the confirmation of demand is not sustainable. Order accordingly set aside. Appeal stands allowed.

[Dictated and Pronounced in the open Court]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita