

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH-COURT NO. I

SERVICE TAX APPEAL NO. 53128 of 2016

[Arising out of Order-in-Original No. 34/PR.Commr/ST/IND/2016 dated 25.07.2016 passed by the Principal Commissioner, Central Excise, Customs & Service Tax, Indore (MP)]

HANS TRAVELS,
15/3, South Tukoganj,
Indore (M.P)

APPELLANT

VS.

**COMMISSIONER OF CENTRAL EXCISE &
SERVICE TAX, INDORE (M.P.).**

RESPONDENT

APPEARANCE:

Shri Ankur Upadhyay, Advocate for the Appellant
Shri Harshvardhan, Authorized Representative of the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R PRIYA, MEMBER (TECHNICAL)**

DATE OF HEARING : July 04, 2023

DATE OF DECISION : August 16, 2023

FINAL ORDER No. 51058/2023

PER HEMAMBIKA R PRIYA

1. The appeal has been filed by M/s. Hans Travels (hereinafter referred to as the Appellant) to assail the Order-in-Original dated 25.07.2016 passed by the Principal Commissioner, Service Tax, Indore wherein the demand of Rs. 69,61,910/- along with interest and penalty has been confirmed.

2. The Appellant is engaged in providing daily passenger transport service from one state to another i.e. Interstate or Intrastate Passenger Transport service. Acting on intelligence that the appellant was providing taxable service viz., tour

operator, the premises of the appellant was searched. Investigations were initiated and statements of the proprietor, and other company officials was recorded. On conclusion of the investigations, show cause dated 18.12.2008 was issued wherein service tax demand of Rs.98,424/- in respect of booking commission, Rs.1,11,82,698/- for Tour Operator and Rs.9,18,286/- in respect of luggage booking was proposed. The demand for Tour operator was raised on the ground that even though the appellant was transporting passengers, but as the buses were in possession of Tourist Permit, hence the appellant is liable for service tax under the category of "Tour Operator". The demands were confirmed by the Commissioner vide Order-in-Original No. 16/COMMR/ST/ IND/2009 dated 06.05.2009 along with penalties.

3. The Appellant filed an appeal before the Tribunal which vide Final Order No. ST/A/52281/2015-CU[DB] dated 30.04.2015 dropped the demand of Rs. 9,18,286/- under Business Support Service but confirmed the demand of Rs. 98,424/- on commission on booking. In respect of demand under the category of Tour Operator service, the Tribunal remanded the matter back to the Adjudicating Authority to examine the eligibility of the appellant for the benefit of exemption under Notification No. 20/2009-ST dated 07.07.2009 under which the person rendering passenger service even though through buses having "Contract Carriage" would be exempted from service tax. Also, the Tribunal directed the Adjudicating Authority to ascertain

the invocability of the extended period and the provisions of section 78 of the Finance Act, 1994.

4. In the denovo adjudication, the Commissioner vide the impugned order confirmed the demand of service tax under the category of Tour Operator Service on income appearing under that head, holding that the services were rendered towards tourism/conducted tour, charter or hire service for buses holding tourist vehicle permit which had been issued by the Secretary, State Transport, M.P. The Commissioner confirmed demand on the receipts of sale of tickets from outstation offices of Appellant appearing under the head "Ticket Booking Other Stations" and on receipts from sale of tickets from Head office of appellant under the heading "Head office cash booking" for the year 2006-07. In respect of Financial Year, 2007-08, he confirmed the demands on receipts appearing under the heading "Head office Cash".

5. The learned Counsel for the Appellant stated at the outset that without going into the merits of the demand, the reasoning given by the Commissioner for confirming demand is erroneous and illegal and the impugned order is beyond scope of show cause notice. He stated that the allegation in show cause notice was that since the bus permit issued to the Appellant are of Contract Carriage/ Tourist, hence the Appellant is liable to service tax, whereas the Commissioner confirmed the demand on a completely different ground. He further added that if there had been such contention/ allegation in show cause notice, only then the Appellant would have produced the supporting documents to

corroborate his contention that the receipts are from passenger transportation only. The impugned order passed by the Commissioner was thus arbitrary and illegal. He relied on the following decisions to support his contention:

(i) **Commissioner of C.EX., Nagpur Vs Ballarpur Industries Ltd.**¹

(ii) **Commissioner Vs Reliance Ports and Terminals Ltd.**²

6. He submitted that nowhere has it been noted in the impugned order as to, the basis or scrutiny of the accounts/ ledgers of the Appellant whereby the Adjudicating Authority had reached the conclusion that all the receipts of outstation office and Head office of the Appellant is from operation of Tours. The department had not adduced a single evidence in support of his conclusion. The Adjudicating Authority had reached this conclusion only as the single basis that the amounts indicated under these heads were large.

7. The Appellant in this context, had submitted a Chartered Accountant's Certificate and certified copies of the ledger of all the ticket bookings done by the Appellant from their Outstation offices and Head offices, which clearly indicate that the said amount in the ledgers pertain to individual ticket booking. A sample copy of daily voucher and tickets also indicates the daily receipt amount from sale of tickets appearing in the ledger. A perusal of the said ledgers and vouchers makes it amply clear

1 [2007 (215) E.L.T. 489 (S.C)]

2 [2016 (334) E.L.T. 630 (Guj.)]

that the receipts are on account of sale of tickets for daily passenger inter state transportation of passenger and not from any "Tour Operator Services".

8. The learned Counsel also submitted that the said notification had been subsequently amended vide notification No. 20/2009 dated 07.07.2009 wherein exemption was extended to tour operator services having contract carriage permit for inter state or intra state transportation of passenger but excluding tourism, conducted tours, charter or hire services. He also submitted that the show cause notice was time barred as there was no suppression of facts from the department.

9. The learned Authorised Representative appearing for the department submitted that one of the basic contentions by the appellant in the grounds given in the appeal memorandum is that the impugned Order is beyond the scope of show cause notice. He submitted that the Tribunal vide its earlier order dated 30.04.2015 had categorically upheld the allegation of the department in the show cause notice that impugned service rendered by the appellant using a contract carriage would fall under the category of tour operator service. To that extent, the show cause notice had gotten merged with the said order of the Tribunal. Therefore, the argument that the impugned order has become infructuous as it has traversed beyond the scope of show cause notice, is not legally tenable and liable to be rejected.

10. He added that the onus of proof is on the appellant to prove its case that they are covered by the exemption notification. He

drew attention to paragraph 21.11 of the impugned order wherein the Adjudicating Authority had categorically held that as the appellant had not submitted any documents and in view of the material on record, the appellant is not eligible for the benefit of the said notification. The appellant in the appeal memorandum has also not submitted any document/evidence to prove that big amounts shown in their ledgers towards booking are towards passenger booking and not towards tourism, conducted tours, charter or hire service. Therefore, the onus is on the appellant to disprove the presumption / findings given by the Adjudicating Authority and to establish that they are covered by the said exemption notification. He relied on the following judgments/orders:

a. **Novopan India Ltd.**³

b. **Inox Wind Ltd.**⁴

11. We have heard the learned counsel for the appellant and the learned authorised representative appearing for the Department. The impugned order and the present appeal has to be examined as per the directions of this Tribunal in its remand order No. 52281/2015 dated 30.4.2015. The relevant portion of the remand order is reproduced for ease of reference:

- "6. In the light of the foregoing, we pass the following order: –
- (i) the demand of ₹ 98,424/- is upheld as uncontested
 - (ii) demand of ₹ 9,18,286/- under business support service is set-aside

3 [MANU/SC/1216/1994]

4 [2020 (35) G.S.T.L. 123 (Tri. - All.)]

(iii) as regards the demand under tour operator service, the case is remanded to the adjudicating authority for de novo adjudication on the limited aspect of eligibility of the appellant for the benefit of exemption under notification No. 20/2009 – ST, dated 07.07.2009 has made applicable with effect from 01.04.2000, invokability of the extended period and imposability of mandatory penalty under section 78 ibid. We make it clear that the adjudicating authority shall determine the eligibility of the appellant for the benefit of the said notification keeping in view the fact that the vehicles involved were tourist vehicles and not stage carriages.

(iv) The demand and penalties will be recomputed based on the adjudicating authority is finding regarding eligibility(or otherwise) of the appellant for the benefit of the notification No. 20/2009–ST, dated 07.07.2009, and invoke ability of the extended period and the provisions of section 78 ibid.”

12. In this regard, it would be appropriate to reproduce the findings of the Commissioner on this aspect;

“21.6 The Hon'ble CESTAT New Delhi vide its Final Order No. ST/A/5228/2015-CU[DB] dated 30.4.15 directed that "As regards the demand under Tour operator Service, the case is remanded to the adjudicating authority for de novo adjudication on the limited aspect of eligibility of the appellant for the benefit of exemption under Not. No. 20/2009-ST, dated 07.07.2009 as made applicable with effect from 01.04.2000 invokability of the extended period and imposability of mandatory penalty under Section 78ibid. We make it clear that the adjudicating authority shall determine the eligibility of the appellant for the benefit of the said Notification keeping in view the fact that the vehicles involved were tourist vehicles and not stage carriages. The demand and penalties will be recomputed based on the adjudicating authority's finding regarding eligibility (or otherwise) of the appellant for the benefit of Not. No. 20/2009-ST and invokability of the extended period and the provisions of Section 78ibid."

21.7 I have gone through the submission made by the notice at the time of personal hearing on 20.10.2015 and further

submission dated 9.6.16. with reference to letter C.No.ST/46/ADJ-1/2008/3098-99 dated 19.5.16 followed by reminder letter even no 3426-25 dated 24.5.16 requesting Noticee to submit the segregated details of all the amount received by them separately for the passenger ticket booking, tourism, conducted tour, charter or hire service provided by them for the period covered under the referred show cause notice. The Noticee has not provided the ledgers of all the heads especially for bus ticket booking and bus plying. In the absence of this the entitlement could not be ascertained under Not. No. 20/2009-ST dated 7.7.2009. The Noticee was further requested vide letter dated 29.06.2016 to submit the details/ledger of the amount received by them on account of Ticket booking and Bus plying for the period covered under the Show Cause Notice. The Noticee submitted the detailed ledgers of all the years covered in the Show Cause Notice on 04.07.2016.

21.8 The Noticee further submitted that the allegation regarding arranging/providing their busses for the marriage parties/picnic is very presumptuous and hypothetical allegation. The present demand is purely based on figures appearing in the profit and loss account and balance sheet for the respective years. There is no cogent substantive evidence that the Noticee have provided their bus services for marriage or picnic. Hence this allegation is fictitious and not tenable. Even if it is considered that the amount of bus rent contract booking pertains to the booking of buses for picnic/marriage etc in that case also the same cannot be taxed as the Noticee has not organized any tour and even this amount is considered as taxable than too it can be seen that in some of the years, it is below the exemption limit of Rs 10 lacs and hence eligible for exemption. I do not find merit in the above submission made by the Noticee. I observe on the basis of documents available on record that the journey carried out by the Noticee from one town to another town as evident from the printed leaflet is a point to point transport and is a "TOUR" as defined under section 65(113) of the Finance Act 1994. It is also evident that the Noticee was engaged in planning, scheduling, organizing or arranging tour in buses

holding tourist vehicle permit granted under Motor Vehicle Act 1988. Copies of permit of 25 buses submitted by the Noticee being plied by them reveals that the permit are tourist permit. I also observe that the Noticee are engaged in the business of planning, scheduling, organizing, arranging and also operating tour as evident from some of the list of passenger, tour program, tour route duly approved by the State Transport Authority, M.P. Gwalior. On perusal of above 25 tourist permit issued by the Secretary, State Transport Authority, Madhya Pradesh, Gwalior. I observe that the permit contains the details of tourist passenger places where the tourist passenger will travel and the tour program would be conducted as per the dates mentioned in the permit. On perusal of copies of various contract available on record I find that the Noticee is engaged in providing services of tour operator by way of providing their buses for marriage parties, picnic parties.

21.9 I also find that the Noticee have not disputed that the vehicles operated by them were tourist vehicle and holding tourist permit. As per records available the vehicles under reference were also having special contract carriage permit to operate tour for a set of passengers as per list on route approved by the State Transport Authority. In view of documents available on record I hold that the activity of the Noticee is an activity liable to Service Tax under tour operator Services and not against stage carriers as claimed by the Noticee.

21.10 The Noticee for the services provided in capacity of Tour operator has accounted receipt of this under different heads namely:-

- Ticket Booking.
- Bus rent contract booking, and
- Receipt from bus plying.

The Noticee vide his letter dated 9.9.16 has submitted the ledger account of Bus party booking only. The Noticee have not submitted any documentary evidence which shows that they have exclusively received Rs.21,68,97,955/- towards TICKET BOOKING. The Noticee was again asked to submit the ledgers of

Ticket booking and Bus plying vide letter dated 29.06.2016. The Noticee submitted the detailed ledgers of ticket booking and bus plying on 04.07.2016.

21.11 On verification of the ledgers it appeared that the Noticee has prepared various ledgers for ticket booking and bus plying. I find that the Noticee has submitted ledgers with the heading "Ticket Booking Other Station" for Rs.4,42,81,019/- and another for "Head Office cash booking" for Rs.3,95,59,176/- total amounting to Rs. 8,38,40,195/- for the year 2006-07. Similarly for the year 2007-08 they submitted a ledger with the heading "Head Office cash booking" for Rs. 5,18,35,892/-. I find that the amount shown in these ledgers pertains to picnic/ marriage, tourism, conducted tour, charter or hire service etc. as the amounts shown are very big and cannot be for individual passenger bookings and there is no supporting document that the amount pertains to passenger booking. I find that this amount is not eligible for exemption under Notification No 20/2009-Service Tax dated 7.7.2009 as these bookings are as against buses holding tourist vehicle permit granted under motor vehicle Act 1988 issued the Secretary, State Transport Authority, Madhya Pradesh, Gwalior for tourism, conducted tour, charter or hire service as such they are not eligible for exemption granted under Finance Act, 2011-2012 under Tour Operator service to tour operators with contract carriage permit. In fact this amount pertains to amount received towards service provided in capacity of TOUR OPERATOR against buses having tourist permit and there is no evidence available on record which shows that this amount was received towards individual bookings. In the light of Notification No 20/2009-Service Tax dated 7.7.2009 and CESTAT order dated 24/7/2015 there are no documents as per record and also the Noticee has not submitted any documents which shows that the Noticee is entitle for exemption in terms of Notification No. 20/2009-Service Tax dated 7.7.2009. I also observe that on perusal of tourist permit available on record along with list of passengers enclosed for the purpose of excursion tour to be submitted to the State Transport Authority, and conclude that the Noticee is engaged in providing services in the capacity of TOUR

OPERATOR and no service has been provided by the Noticee in capacity of stage carrier and I hold accordingly. I also find that the Noticee is not entitled for exemption of Rs 10 lacs as claimed by them. The remaining amount found eligible for exemption granted under Notification No. 20/2009-ST dated 7.7.2009 and Section 72 Finance Act, under Tour Operator service to tour operators for transport of passengers.”

13. From the above paragraphs, it is abundantly clear that owing to the retrospective amendment of the notification, the Commissioner had to specifically examine the issue afresh by asking the appellant to establish their eligibility to the benefit of the notification no. 20/2009-Service Tax dated 7th July, 2009 only. The issue as to whether the service provided by the appellant is classifiable under Tour Operator service is not open for decision, in the remand order. Hence, we restrict ourselves to this aspect only. For ease of reference, the Notification is reproduced hereinafter:

“Notification No.20/2009 – Service Tax

New Delhi, the 7th July, 2009

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service referred to in sub-clause (n) of clause (105) of section 65 of the Finance Act, provided or to be provided to any person, by a tour operator having a contract carriage permit for inter-state or intrastate transportation of passengers, excluding tourism, conducted tours, charter or hire service, from whole of the service tax leviable thereon under section 66 of the said Finance Act.

[F.No.334/13/2009-TRU]

(Prashant Kumar)

Under Secretary to the Government of India”

14. Subsequently, as highlighted by the learned Counsel, a corrigendum 334/8/2009 dated 31.08.2009 was issued to the aforesaid Notification no. 20/2009 -ST dated 07.07.2009 which read as follows:

"Tour Operator Service-Exemption to contract carriage permit holders-
Corrigendum to Notification No. 20/2009-ST dated 07.07.2009

In the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 20/2009-Service Tax, dated the 7th July, 2009 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. 492(E), dated the 7th July, 2009, at Page 89, in line 18,

For "contract carriage permit", read "contract carriage or tourist vehicles with a permit".

15. With the issue of this corrigendum, we observe that exemption was available to the service of tour operator for interstate or intrastate transportation of passengers, other than for the purpose of tourism, even for vehicles plying with tourist permit.

16. However, we note that the adjudicating authority in para 21.11 of the impugned order has categorically held that the appellant did not submit any documents in support of his contention. No cogent explanation was provided or evidence to prove that the large amounts shown in the ledgers towards booking are towards passenger booking and not tourism, conducted tours, charter or hire service. In this regard, we note that no cogent explanation was provided by the appellant to clarify the block booking of tickets for officials of Laxmivilas Bank Ltd during the period under consideration. Similarly, there are other block booking of tickets to Indore to Surat, Aurangabad,

Nasik, Pune etc. The appellant has not been able to establish that these bookings involved only interstate or intrastate transportation of passengers, and it did not include tourism.

17. We note that the Commissioner has observed that the 25 tourist permits issued by the Secretary, State Transport Authority contain the details of tourist passenger places where passengers will travel and the tour programme would be conducted as per the dates mentioned in the permit. He has also examined the copies of contracts which were available on record wherein it is established that the appellant was providing the services of tour operator by providing their buses for marriage, parties, picnic parties etc. From the records available, the Commissioner has held that there are no documents available in the record and nor had the appellant submitted any documents which shows that they are eligible for the exemption in terms of the notification. We find that the Supreme Court in the case of **Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad**⁵ [relied on the decision in the case of **Mangalore Chemicals and Fertilisers Ltd v. Deputy Commissioner of Commercial Taxes and Others**⁶ had opined as follows:

"14. In Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner of Commercial Taxes & Ors. [1991 (55) E.L.T. 437 (SC) = 1992 Suppl. (1) S.C.C. 21], a Bench of this Court comprising M.N. Venkatachaliah, J. (as the learned Chief Justice then was) and S.C. Agarwal, J. stated the relevant principle in the following words :

"Shri Narasimhamurthy again relied on certain observations in CCE v. Parle Exports (P) Ltd. [1988 (38) E.L.T. 741 (SC) = 1989 (1) SCC

5 [MANU /SC/1216/1994]

6 [1992 Suppl.1 SCC 21]

345), in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax payers and should be construed against the subject in case of ambiguity. **It is an equally well known principle that a person who claims an exemption has to establish his case.** Indeed, in the very case of Parle Exports (P) Ltd. relied upon by Shri Narasimhamurthy, it was observed :

“While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.”

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in *Union of India v. Wood Paper Ltd.* [1990 (47) E.L.T. 500 (SC) = 1990 (4) SCC 256] :

“...Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction....”

15. This was also the view expressed in *The Commissioners of Inland Revenue v. James Forrest* [(1890) 15 A.C. 334] where Lord Halsbury, L.C. observed : “all exemptions from taxation to some extent increase the burden on other members of the community ...” and in *Littman v. Barron (Inspector of Taxes)* (1951 (2) A.E.R. 393), a decision of the Court of Appeal where Cohen, L.J. said : “the principle that in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability”.

18. We hold that the appellant has not been able to discharge the onus on him prove his case that they are eligible for

exemption under the said notification. Despite clear directions of this Tribunal to the adjudicating authority to determine the eligibility of the appellant for the benefit of the said notification, keeping in view the fact that the vehicles involved were tourist vehicles and not stage carriages, he has failed to produce the relevant documents to support his contention that he did not fall within the exclusion condition of the Notification.

19. We now come to the limitation aspect. We find that the appellant has pleaded there was confusion in regard to the definition of Tour Operator. We note that definition of 'Tour Operator' during **01.04.2000 to 09.09.2004** under Section 65 (52) was as follows:

“Tour Operator' means any person engaged in the business of operating tour in a tourist vehicle covered by a permit granted under the Motor Vehicle Act, 1988 (59 of 1988) or the Rules made there under –”

Thereafter, the definition of 'Tour Operator' **with effect from 10.09.2004** under Section 65 (115) read as follows:

“tour operator' means any person engaged in the business of planning scheduling, organizing 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 covered by a permit granted under the Motor Vehicle Act, 1988 (59 of 1988) or the rules made thereunder –”

Further, **with effect from 16.05.2008** the definition of Tour Operator', under Section 65 (115) read as follows:

“Tour operator' means any person engaged in the business of operating tours in tourist vehicle or a 'contract carriage' by whatever name called covered in a permit, granted under the Motor Vehicle Act, 1988 (59 of 1988) or the rules made thereunder-”

20. It is therefore, apparent that definition of tour operator has been amended from time to time since it was brought into the service tax net. Therefore, it has to be acknowledged that there may have been confusion to the scope of this service, and the benefit should go the taxpayer. We uphold the demand for the normal time period, and set aside the demand for the extended period. The penalty is also modified accordingly.

21. In view of the above, we modify the impugned order to the extent indicated above, and allow the appeal partially.

(Pronounced in the open court on 16.08.2023)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)**