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Customs, Excise And Service Tax Appellate, Allahabad

Case No: Service Tax Appeal No.70271 Of 2017

M/s MYR Logistics & Travel Service		APPELLANT
	Vs	
Commissioner Of Central Excise & Service Tax, Allahabad		RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Finance Act, 1944 - Section 65(20), 67, 69, 70, 77, 78

Hon'ble Judges: P.K. Choudhary, Member (J); Sanjiv Srivastava, Member (T)

Bench: Division Bench

Advocate: Stuti Saggi, Santosh Kumar

Final Decision: Allowed

Judgement

P.K. Choudhary, Member (J)

1. The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.17-ST/APPL-ALLD/LKO/2017 dated 10.01.2017 passed by the learned Commissioner (Appeals) Central Excise & Service Tax, Lucknow.

2. The facts of the case in brief are that the Appellant is providing vehicles to M/s Uttar Pradesh State Road Transport Corporation [UPSRTC]. Revenue collected information from UPSRTC about the amount paid to the Appellant for the period from 2009-10 to 2012-13. It appeared to Revenue that the amount so received by the Appellant was consideration towards providing 'Rent-a-Cab Operators service' and was chargeable to Service Tax. Therefore, a Show Cause Notice SCN dated 09.04.2014 was issued demanding Service Tax of Rs.1,40,911/- for the said period on a consideration of Rs.43,79,274/- received by the Appellant. The Appellant submitted before the Original Authority that the Appellant was entitled for abatement of 60% of the assessable value vide Notification No.09/2004 dated 09.07.2004, 01/2006-S.T. dated 01.03.2006 and Notification No.6/2005-S.T. dated 01.03.2005. The abated value is eligible for small scale exemption and after allowing transit exemption, the Appellant was not required to pay any service tax. The SCN was adjudicated vide Order-In-Original dated 30.07.2014 wherein the Original Authority confirmed the demand as proposed in the SCN and also imposed penalties under Sections 77 & 78 of the Finance Act, 1944 [The Act]. Being aggrieved, the Appellant filed appeal before the learned Commissioner (Appeals).The Learned Commissioner (Appeals) partly allowed the appeal filed by the Appellant by setting aside the penalty of Rs.10,000/- imposed under Section 77 of the Act, for violation of Section 70 of the Act read-with Rule 7 of the Rules. He also set aside the order of the Original Authority to pay prescribed amount under Rule 7(C) of the Rules for the period of delay in filing of ST - 3 Returns. The remaining Order-In-Original has

been upheld by the learned Commissioner (Appeals). Being aggrieved, the Appellant is in appeal before this Tribunal.

3. The learned Commissioner (Appeals) has examined Explanation “B” of Notification No.6/2005-S.T. dated 01.03.2005 and held that while arriving at the aggregate value of taxable service under the said explanation, such sum is to be excluded which is exempted from the whole of Service Tax and that in the instant case, under the said Notification No.09/2004 and 1/2006-S.T., abatement of 60% is allowed which does not amount to exemption from whole of the Service Tax and therefore, whole of the consideration received by the Appellant needs to be taken into consideration while arriving at aggregate value of the services provided.

4. Learned Departmental Representative justified the impugned order and prayed that the appeal being devoid of any merit be rejected.

5. Heard both sides and perused the appeal records.

6. We find that as per the agreement reached between the Appellant and UPSRTC, it would be evident that Appellant attached his bus with UPSRTC on the basis of profit sharing. There is no fixed rent or hire charges. Instead, the profit is variable. Therefore, attaching a bus with the UPSRTC on profit sharing basis would not come under the taxable service under the ‘rent-a-cab operator service’ of the Act, as the ingredients of the definition are absent.

7. That the learned Commissioner (Appeals) has referred to the judgement of Hon'ble Gujrat High Court in the case of Commissioner Service Tax Vs Vijay Travels reported in 2014 (36) S.T.R. 513 (Guj.). The facts of the case are that the Appellant had entered into an agreement with Gujarat Secondary Education Board (GSEB) for supply of vehicles for the purpose of transportation of papers/ answer sheet, examiners and staff. The vehicles were provided as per requirement of GSEB and invoice was to be raised with the details of period of service provided by type of vehicle, distance travelled, rate of amount due in providing such service. The Hon'ble High Court in the said case resolved interalia a question whether the Tribunal is correct in holding that rent a cab scheme operator does not cover all manner of transport when the vehicle rented by M/s Vijay Travels, squarely falls within the definition 'cab' as per Section 65 (20) of the Finance Act, 1994.

8. That Hon'ble High Court resolved a different question of fact in the case of Vijay Travels cited supra as in that case, the vehicles were provided on rent depending upon the type of vehicles provided, whereas, in the impugned case the vehicle was attached with UPSRTC on profit sharing basis and not on rent or hire. Therefore reliance placed by the learned Commissioner (Appeals) on the said judgement is unjustified because the facts in the case of Vijay Travels and of the impugned case are distinguishable as in this case vehicle has not been provided to UPSRTC either on hire or on rent.

9. That the Learned Commissioner (Appeals) has placed reliance on the judgement of Lucknow Bench of Hon’ble High Court of judicature at Allahabad in the case of UPSRTC Vs CCE Lucknow (W.P. No. 11582 (MB) of 2008. Now the appeal filed by UPSRTC against the aforesaid judgement has been decided by the Hon'ble Supreme Court as reported in 2011 (21) STR 357 (SC). The Hon'ble Supreme Court held as under:-

“6. In that view of the matter, we find no reason to interfere with the order passed by the High Court holding that the appellant has no locus standi to file the present appeal as also the writ petition. Since payment of such tax is demanded from the private bus operators, if anybody is really aggrieved, it is the private bus operators. In our considered opinion, if any challenge is to be made to such notice issued by the

respondents, the same has to be done by the aggrieved party like the private bus operators. It is only they who can challenge the issuance of the aforesaid notices by taking recourse to the appropriate remedy as provided under the Finance Act, 1994. In case the said aggrieved parties take recourse to such statutory remedy, they would be entitled to take and urge all issues which may be available to them in accordance with law. The said issues as and when raised shall be considered and decided in accordance with law."

10. That from the perusal of the above judgement, it would be evident that the Hon'ble Supreme Court has rejected the appeal on the ground of locus standi of the petitioner to agitate the issue and not on merit therefore, no inspiration can be taken from the judgement of either Hon'ble High Court or the Hon'ble Supreme Court as no ratio has been enunciated on the merit of the issue. The Appellant states and submits that according to the doctrine of merger, the judgement of Hon'ble High Court has merged into the superior judgement of Hon'ble Supreme Court, therefore, inspiration taken by the learned Commissioner (Appeals) is bad in law.

11. That from the perusal of the Explanation "B" to Notification No. 06/2005-S.T. dated 01.03.2005, it would be evident (i) that the aggregate value for the purpose of this notification would be gross value of taxable services bereft of the value of goods used in providing the service; (ii) that the aggregate value shall be determined after deducting the gross amount exempt from whole of service tax under Notification No. 12/2003-ST dated 20.06.2003 or Notification No. 01/2006-S.T. 01.03.2006 (as amended). On deduction of the amount as envisaged under Notification No. 01/2006 ST dated 01.03.2006, aggregate taxable value each year would be much below the exemption limit as envisaged in the Notification No. 06/2005 ST dated (01.03.2005). Financial year-wise details of taxable value calculated in the manner envisaged in Explanation B to Notification No. 06/2005 S.T. dated 01.03.2005 is as below:-

Financial year wise payments received from M/s UPSRTC and Taxable value determined as per notification number 01/2006 dated 01.06.2016.

12. That Notification No. 06/2005-ST dated 01.03.2005 (as amended) seeks to exempt taxable service of aggregate value upto to Rs. Ten lakhs in any financial year in the case of rent-a-cab service, the value under Section 67 of the Finance Act, 1994 would be 40% of the gross amount as per notification No. 01/2006-ST dated 01.03.2006. The rest 60% of value is attributable to value of goods which is exempt under Notification No. 01/2006-ST dated 01.03.2006. According to explanation No. (B) of clause-3 of notification number 06/2005-ST dated 01.03.2005, the gross amount which is exempt from payment of service tax would not constitute in the aggregate value of taxable service. As would be evident from the table above, the taxable value in every financial year is far less than the exempted limit. As such, no service tax is payable by the Appellant.

13. In view of the above discussion, the impugned order to the extent of confirmation of the demand and imposition of penalty under Section 77 of the Act of Rs.200 for every day during which the party continued to fail to get itself registered under Section 69 of the Act read with provisions of Rule 4 of the Rules ibid, starting with the first day of such failure after the due date, till the date of actual compliance and penalty of Rs.1,40,911/-under Section 78 of the Act are set aside. Accordingly the appeal filed by the Appellant is allowed with consequential relief, if any, as per law.