आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. ☎: 079-26305065 **टेलेफैक्स** : 079 - 26305136

NATION TAX MARKET

क फाइल संख्या : File No : **V2(ST)28/North/Appeals/2019-20** / J3777 To J3775

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-002-APP- 98 -19-20**

दिनाँक Date : **08/11/2019** जारी करने की तारीख Date of Issue 28/11/2019

श्री गोपी नाथ, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Gopi Nath** Commissioner (Appeals)

ग Arising out of Order-in-Original No. **STC-61/ADC/2009** Dated **29/12/2009** Issued by ~~**Joint /**~~ **Additional Commissioner,** Service Tax , Div- , Ahmedabad.

ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s Patel Inn & Travels Pvt. Ltd

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता हैः–
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपीलः–
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

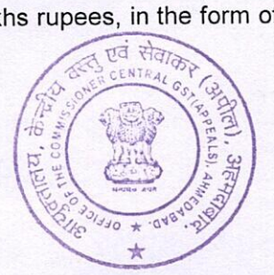
वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकतीः–
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद–380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar,Ahmedabad – 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी– 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरूद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम,1994 की धारा 86 की उप–धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त,, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ **(OIA)**(उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा **अधीक्षक** केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश **(OIO)** की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)**(OIA)**(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (**OIO**) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची–1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/– पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. **सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो**

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है –

(i) **धारा 11 डी के अंतर्गत निर्धारित रकम**

(ii) **सेनवैट जमा की ली गई गलत राशि**

(iii) **सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम**

⇨ **आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।**

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;

(ii) amount of erroneous Cenvat Credit taken;

(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇨ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) **इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।**

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

By Speed Post

दूरभाष : **26305065**

Order In Appeal

1. M/s. Patel Inn & Travels Pvt Ltd, 8, Shroff Chambers, Opp. Navchetan High School, Paldi Char Rasta, Paldi, Ahmedabad, (herein after referred to as 'the appellant') have filed appeals against OIO No. STC-61/ADC/09 dated 29-12-2009 (herein after referred to as 'the impugned order') passed by Additional Commissioner, Service Tax, Ahmedabad (herein after referred to as 'the adjudicating authority').

2. The facts of the case, In brief, is that the appellant service under the category of 'Tour Operator' viz. Plying Buses from one city / town to another city / town which is classified as defined under sub Clause (n) of Clause 105 of Section 65 of finance Act 1944; the said service provider, though registered with service tax department was indulging in evasion of service tax by not paying proper service tax on the amount received by the appellant.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal. The appellant contended that for the levy of service tax on tour operator, the vehicle should be "contract carriage" and all three conditions of the contract are required to be satisfied whereas in the case of the appellants none of the conditions was satisfied; that registration under the category of tour operator does not mean that the appellant are liable to pay tax; that there was no legal necessity to invoke the provisions of Section 73(1) of the Act as the situation of either of fraud or collusion or willful misstatement or suppression of facts come into play when something Is declared in the returns whereas In the present case the appellants had not filed any returns and therefore, the provisions or extended period of imitation do not apply and the proceedings are therefore time barred; that the levy of service tax on tour operator service was ambiguous since its inception and the appellants being Illiterate were under confusion regarding the levy.

4. The present appeals was kept pending, as the department had preferred an appeal in a similar case of M/s Patel Tours & Travels (Tax Appeal No.1065/2011) in High Court of Gujarat . The said tax appeal now has been decided by the Hon'ble High Court and hence the present appeals are being taken up for disposal.

5. Hearing was granted wherein Shri S.J.Vyas, Advocate, appeared on behalf of the appellant and tabled before me the written submissions in addition to their earlier representations and reiterated that appellant are

engaged in business of running their own buses on point to point basis from one city to another city; they are not engaged in planning , scheduling, organizing or arranging tour; they have not entered into any agreement with any group for planning of tour and hence they are not liable to pay service tax under taxable category " Tour operator Service" ; they have not used the vehicle as tourist vehicle and merely because the bus has a permit as a contract carriage it does not becomes a tourist vehicle. The appellant has relied upon the following judgement :

1. Commissioner of Service Tax, Ahmedabad Vs. Patel Tours & Travels [2010(20)STR 698 (Tri. Ahmedabad)].
2. Commissioner of Central Excise, Vadodara-II Vs. Gandhi Travels-2009(13)STR 597 (HC Guj.)
3. Prasanna Travels Ltd [2007(8) STR 34 (CESTAT - Mumbai)]

Further, the appellant relied on Notification No. 20/2009 ST dated 07.07.2009 and board circular No. 334/13/2009-TRU dated 06.07.2009 which had clarified that private bus operators undertaking point to point transportation of passengers in a vehicle bearing contract carriage permit is being exempted from service tax.

6. I have carefully gone through the facts of the case on records, grounds of appeals in appeal memorandum and submission made at the time of personal hearing.

7. The issue to be decided in this case is whether the service provided by the appellant can be classified under 'Tour Operator Service'. The definition of 'Tour Operator' given under Section 65(115] of the Finance Act,

'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 tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1953 or the rules made there under,

'taxable service' as per Section 65(105)(n)

means any service provided or to be provided to any person by a tour operator in relation to a tour,

it is alleged that the appellant is operating tourist vehicle, which is adopted under "contract carriage. The tourist vehicle is defined as:

'Tourist vehicle' is defined under Section 2(43) of the Motor Vehicles Act, 1986 means a contract carriage, which in turn is defined under section 2(7] of the Motor Vehicles Act.

'contract carriage' means a motor vehicle which carries passenger or passengers for hire or reward and is engaged under a contract, whether expressed or Implied, for the use of such vehicle as a whole for carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him In this behalf on a fixed or an agreed rate or sum on a time basis, whether or not with reference to any route, (b) or distance (C) or from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes (i) maxi-cab; and (ii) a motor-cab notwithstanding that separate fares are charged for its passengers.

As per above definition, the contract should be for the use of vehicle as a whole. On perusal of tickets issued to passengers, it can be seen that the entire bus is not contracted to a single party and the passengers are independent commuters and the buses are not contracted to such passengers, rather any person can buy a ticket and board the bus and disembark at any point. Thus the buses are actually been used as stage carriage, as defined under section 2(40) of the Motor Vehicles Act. 1988, which says that **'stage carriage'** means a 'motor vehicle constructed or adapted to carry more than six passengers, excluding the driver, *for* hire or regard at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey'.

It is clear from the records as well as from the study of the activity of the appellant though the *bus has a* permit as a contract *carriage it* does not fulfill the condition of a tourist vehicle for the purpose of levy of service tax. In the present case, it is dear that though the buses obtain permits for operating as contract carriage, but in actual they are operated as stage carriage. Merely fixing timings for their daily services does not amount to planning, scheduling organizing etc.

8. I find that the State Undertakings run buses, which run on the same route carrying passengers, are not subjected to service tax as these buses bear 'stage carriage permit'. In order to bring parity between the two, the services provided by the tour operators undertaking point-to-point transportation of passengers in a vehicle bearing contract carriage permit is being fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tours, or charter or hire, vide Notification No. 20/209-ST dated 07.07.09. The notification read as below:

"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."

Further, the statutory provisions of the Finance Act, 2011 granted retrospective effect to the said notification from 01-04-2000.

9. I further find that in decision of the Tribunal Ahmedabad in case of Commissioner of Service Tax, Ahmedabad Vs. M/s Patel Tours & travels:-

1. In Para 7.1 of this judgment it has been held by me Tribunal that to bring a person to the fold of 'tour operator service' the person should have been engaged in the business of operating tours in a tourist vehicle covered by a permit granted under Motor Vehicles Act, 1988. The definition has three important ingredients. Firstly, a person must have been engaged in the business of operating tours. The second ingredient is that tour must be conducted using a tourist vehicle. The third ingredient is that the vehicles must have been under the grant of the permit under Motor Vehicles Act to conduct tourism business. The learned Commissioner has rightly observed that merely because the bus has the permit under 'contract carriage', it does not become the tourist vehicle.
2. In para 7.2 it is stated that the same view was taken by the same bench in the case of Ghanshyam Travels, wherein it was held that unless the vehicle of the contract carriage permit holder fulfills the requirement as mentioned in Central Motor Vehicles Rules of a 'tourist vehicle', merely because he is holding the contract carriage permit, he does not become liable to tour operator service, The similar and consistent view has been by the same tribunal in the case of Gatulal V Patel and Gandhi Travels, which has been affirmed by the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise, Vadodara-II Vs. Gandhi Travels-2009 (13) STR 597 (Guj.). Hence I follow the same and hold that merely because the bus has the permit under

'contract carriage permit' *as in* the case of the appellant it does not become tourist vehicles and does not become liable to tour operator service.

10. I further find that the department's tax appeal No 1065/2007 in the High Court (Gujarat) against the decision of Tribunal- Ahmedabad in the case of Commissioner of Service Tax, Ahmedabad Vs. M/s Patel Tours & travels [2010(20)STR 698 (Tri. Ahmedabad)] has been dismissed 'as not maintainable' by the Hon'ble High Court (Gujarat).

ORDER

11. In view of the foregoing discussions, I set aside the Impugned orders and allow the appeals filed by the appellant with consequential relief. The appeals are disposed off accordingly.

(Gopi Nath)
Commissioner (Appeal)

Attested

(Brijesh Sharma)
Superintendent (Appeals)
Central Excise, Ahmedabad

By Speed Post / Regd. Post.A.D

To,
M/s. M/s. Patel Inn & Travels Pvt Ltd,
8, Shroff Chambers,
Opp. Navchetan High School,
Paldi Char Rasta, Paldi,
Ahmedabad.

Copy to :

1 The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2 The Pr. Commissioner CGST and Central Excise, Ahmedabad (South).
3. The Deputy Commissioner, CGST & C.Ex, Division Rakhail, Ahmedabad-South.
4. The Deputy Commissioner (Systems), Central Excise, Ahmedabad (South).
5. Guard file
6. PA File