



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)24 to 27/Ahd-South/2019-20 / 13343 To 13347

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-071 to 074-2019-20
दिनांक Date : 29-11-2019 जारी करने की तारीख Date of Issue 18/12/2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri Gopi Nath, Commissioner (Appeals)

ग Arising out of Order-in-Original No.

STC/31/JC/Div-II/08-09	17.11.2008
64/D/ST/2010	31.08.2010
SD-02/Ref-77/2010-11	18.03.2011
SD-02/Ref-78/2010-11	18.03.2011

, issued by Joint Commissioner, Div-STC, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**Paavan Bus service
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



Order In Appeal

1. M/s. Pavan Bus Services, Pritamnagar First Dhal, Opp UCO Bank, Ellisbridge, Ahmedabad (herein after referred to as 'the appellant') have filed appeals against orders mentioned here below (herein after referred to as 'the impugned orders') passed by Joint /Assistant Commissioner, Service Tax, Ahmedabad (herein after referred to as 'the adjudicating authority').

Sl. No.	Appeal No.	Order No. & Date	Passed by
1	V2 (ST) 24/Ahd-South/19-20	STC-31/JC/Din-III/08-09 dtd 17.11.2008	Joint Commissioner, Service Tax, Ahmedabad
2	V2 (ST) 25/Ahd-South/19-20	64/D/ST/2010 dtd 31.08.2010	Assistant Commissioner, Service Tax, Div-IV, Ahmedabad
3	V2 (ST) 26/Ahd-South/19-20	SD-2/Ref-77/10-11 dtd 18.03.2011	Assistant Commissioner, Service Tax, Div-II, Ahmedabad
4	V2 (ST) 27/Ahd-South/19-20	SD-2/Ref-78/10-11 dtd 18.03.2011	Assistant Commissioner, Service Tax, Div-II, Ahmedabad

1.1 Since issue involved in above appeals is common, all appeals are taken up together for decision vide this common order

2. The facts of the case, in brief, are that the appellant provides 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 orders, the appellant preferred the present appeals, 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 appellant 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 cases the appellant had not filed any returns and therefore, the provisions of extended period of limitation 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 were 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. Three opportunity of hearing to the appellant were granted but they have taken adjournment , However the appellant vide their letters dated 27/11/2019 waived the requirement of personnel hearing and requested to decide the matter on merit and records available with the department. In their appeal memorandums and written submissions submitted earlier, it is observed 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 :

- I. Commissioner of Service Tax, Ahmedabad Vs. Patel Tours & Travels [2010(20)STR 698 (Tri. Ahmedabad)].
- II. Commissioner of Central Excise, Vadodara-II Vs. Gandhi Travels- 2009(13)STR 597 (HC Guj.)

6. 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.



7. 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.

8. 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 clear 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.

7. 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."

Q

Further, the statutory provisions of the Finance Act, 2011



granted retrospective effect to the said notification from 01-04-2000.

8. 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.

9. 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

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

Gopi Nath
(Gopi Nath) 29/11/19
Commissioner (Appeal)

Attested

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

By Speed Post / Regd. Post.A.D



To,
M/s. Pavan Bus Services,
Pritamnagar First Dhal,
Opp UCO Bank,
Ellisbridge,
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