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(2008) 09 GUJ CK 0057

In the Gujarat High Court

Case No : Tax Appeal No. 1065 of 2007

Commissioner of C. Ex. APPELLANT

Vs

Gandhi Travels RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 65(115)

Citation : (2009) 13 STR 597

Hon'ble Judges : Rajesh H Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : Harin P. Raval, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Commissioner of Central Excise, Vadodara II, has filed this Tax Appeal u/s 35-G of the Central Excise Act, 1944 read with Section 83 of the Service Tax Act (sic) (Finance Act, 1994), proposing to formulate the following substantial questions of law:

(a) Whether or not the ''tour'' service provided by the respondent to their clients under contract in vehicles covered by permits granted under Motor Vehicles Act as "contract carriage" will be covered under the definition of the "tour operator" as given u/s 65(115) of the Finance Act, 1994?

(b) Whether or not, a "contract carriage" constructed or adopted and equipped and maintained in accordance with such specification as may be prescribed in this behalf are "tourist vehicle" ?

(c) Whether or not, in view of the facts and circumstances of the case, the Tribunal is justified in holding that the service provided by the respondent is not covered under "tour operator" services ?

2. Heard Mr. Harin P. Raval, learned Assistant Solicitor General for the appellant

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and perused the orders passed by the authorities below. Since the adjudicating authority as well as the appellate authorities have discussed the entire issue with regard to four vehicles in respect of which services provided by the respondent to M/s. IPCL & M/s. IFFCO in the subject contracts by utilising any of the said four vehicles and since finding is given by the appellate authorities that they do not fall within the meaning of ''Tour Operator'', we do not expand the scope of the present proceedings and we do not express any opinion as to whether the contract carriage vehicles would fall within the meaning of Tour Operator. Looking to the facts and circumstances of the case and looking to the finding arrived at by the appellate authorities, we are of the view that no substantial questions of law arises out of the order of the Tribunal.

3. The appeal is, therefore, dismissed.

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