(2008) 10 GUJ CK 0050

In the Gujarat High Court

Case No : Tax Appeal No. 146 of 2008

Commissioner of Central Excise and Customs — APPELLANT

Vs

Ashok Travels — RESPONDENT

Date of Decision : 08-10-2008

Acts Referred:

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

Citation : (2010) 20 STR 598

Hon'ble Judges : D.A. Mehta, J;Abhilasha Kumari, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J

1. The Revenue has filed this appeal u/s 35-G of the Central Excise Act, 1944, read with Section 83 of the Service Tax Act, challenging the judgment and order of the Customs, Excise and Service Tax Appellate Tribunal (''the Tribunal'' for short) dated 14.5.2007 2008 (12) S.T.R. 362 rendered in Service Tax Appeal No. 25 of 2004, 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 adapted 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. We have heard Mr. Harin P. Raval, learned Assistant Solicitor General of India for the Appellant and have perused the orders passed by the authorities below. Mr. Harin P. Raval has brought to our notice, the order dated 16.9.2008 passed in Tax Appeal No. 1065 of 2007 Commissioner of C. Ex. Vs. Gandhi Travels, wherein similar substantial questions of law had been proposed, whereby the appeal of the Revenue has been dismissed. He has very fairly stated that as the substantial questions of law in the present appeal are identical, appropriate orders may be passed.

3. The Tribunal has rendered a categorical finding that the buses operated by the Respondent were not licensed as ''tourist vehicles''; therefore, they do not fall within the meaning of ''tour operator''. It has also been noted by the Tribunal that no evidence to the contrary has been produced by the Revenue and that the issue involved in the case is squarely covered by the judgment and order of the Tribunal in the case of CCE and C, Vadodara v. Gandhi Travels, reported in 2007 (79) RLT 774 : 2007 (6) S.T.R. 430 .

4. Looking to the facts and circumstances of the case, the finding arrived at by the Tribunal, and considering the order dated 16.9.2008, we are of the view that no substantial question of law arises from the order of the Tribunal so as to warrant interference. The appeal, therefore, stands dismissed.

