
(2010) 04 P&H CK 0276
In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise

APPELLANT

Vs

Kuldeep Singh Gill

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Finance Act, 1994 — Section 65, 66, 67, 69, 70
Motor Vehicles Act, 1988 — Section 2, 88

Citation : (2010) 18 STR 708 : (2010) 27 STT 224 : (2010) 32 VST 526

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The matrix of the facts, culminating in the commencement of, relevant for disposal of present appeal filed by the revenue and emanating from the record, is that the respondent-firm M/s Kuldeep Singh Gill was dealing in transport business. It provided the transport service to M/s Indian Oil Corporation, Suchipind, Jalandhar (for short "IOC") during the relevant period. The revenue claimed that since the respondentfirm provided the taxable transport service under the category "Rent-a-Cab" to IOC, so, it was liable to pay service tax, was required to be registered and to file half yearly returns with the authorities under Sections 69 and 70 of the Finance Act, 1994 (hereinafter to be referred as "the Act"). Since the respondent-firm neither applied for registration nor paid the service tax nor filed the returns, so, a show cause notice was issued to the respondent, as to why the service tax amounting to Rs. 93,425/- alongwith interest be not recovered and penalty be not imposed in this relevant connection.

2. In the wake of show cause notice, the respondent filed the reply, interalia, explaining that the vehicles were hired from the market for providing services to IOC. The Freight of the hired vehicles was paid to the owner of the vehicle for each fortnightly basis regularly. It was claimed that as the department did not impose service tax on this job in the past, therefore, the respondent-firm was

not aware of such a tax liability. The respondent has also claimed that the firm was not in a good financial position to pay the amount of service tax and payment of first instalment would disturb whole of its business. Although the liability to pay service tax was denied, however, it was prayed that in any event, lenient view be taken against the respondent.

3. The explanation submitted by the respondent did not find much favour with the revenue and the Adjudicating Authority imposed a penalty of Rs. 93,425/- u/s 70 for contravention of the provisions of the Act. The respondent-firm was also directed to be registered with the Service Tax Authority and to deposit the service tax along with interest at the rate of 24% per annum on the delayed payment of service tax till the final deposit and comply with all the provisions of the Act/Rules, vide order dated 31.12.2001 (Annexure A1).

4. Aggrieved by the order (Annexure A1), the respondent firm filed the appeal, which was dismissed by the Commissioner (Appeals) Custom & Central Excise, vide order dated 30.7.2003 (Annexure A2). However, the appeal filed by the respondentfirm was accepted by the Customs, Excise and Service Tax Appellate Tribunal, vide impugned order dated 12.5.2005 (Annexure A3).

5. The revenue did not feel satisfied with the impugned order (Annexure A3) and filed the present appeal, which was admitted to consider the following substantial questions of law:

A. Whether the matador rented by the Respondent in the present case, squarely falls within the definition of "Cab" as per Section 65(20) of the Finance Act, 1994?

B. Whether the Ld. Tribunal is correct in holding that there was no renting out of cabs as the vehicles continued to be with the operator and moreover when the "Rent a Cab Scheme Operator Services" under the Finance Act, 1994 does not require ownership of the vehicle?

C. Whether in the facts and circumstances of the case, the use of matador by the Respondent amounted to a transport service or not especially when the matador was exclusively at the command of M/s Indian Oil Corporation?

D. Whether the services provided by the Respondent are covered under the definition of "Rent-a-Cab Scheme Operator provided u/s 65(59) of Finance Act, 1994?

That is how, we are seized of the matter.

6. Assailing the impugned order (Annexure A3), the learned Counsel for the revenue has contended with some amount of vehemence that the transport service provided by the respondent-firm to the IOC was taxable and since the firm has neither got itself registered nor paid the service tax, so, the Adjudicating Authority has rightly imposed the penalty, vide order (Annexure A1), which was duly confirmed by the Commissioner (Appeals), vide order

(Annexure A2). The argument is that the Tribunal has just bye-passed the relevant legal provisions and set aside the order of Commissioner (Appeals) on un-sustainable grounds. Thus, he prayed for acceptance of the appeal. In support of his contention, the learned Counsel for the revenue has placed reliance on the judgment of High Court of Judicature at Madras in case Secy. Federn. of Bus-operators Assn. of T.N. Vs. Union of India (UOI), .

7. Hailing the impugned order, on the contrary, the learned amicus curiae counsel argued that as such transport services are not covered under service tax laws, therefore, the Tribunal has rightly accepted the appeal of the respondent-firm and no interference is warranted in this relevant behalf.

8. As is evident from the record, rather admitted that the respondent-firm was providing transport services to the IOC at the relevant time. This fact has been acknowledged by the IOC, vide letter No. JPT/ACCTS/29 dated 13.3.2001, in which, it (IOC) admitted having paid Rs. 18,68,505/- to the respondent-firm during the period in question on account of "matadors hired for school going children". Thus, the facts of this case are neither intricate nor much disputed.

9. At the very outset, it may be added that tax on services came to be introduced by the Act for the first time with effect from 1.7.1994. The aim and objects for introduction of the provisions and necessity for levying of service tax was that "services" constituted about 40% of Gross Domestic Product of India and had gone tax free so far in comparison to the "goods manufactured" which alone were taxed. It was felt by the Government that in taxing all the services may imply discrimination against the goods in favour of the services and perhaps that was the reason, that provisions of the service tax came to be imposed by the Act.

10. Such thus being the state of affairs on record, now the sole question that arises for determination, is that the indicated transport service provided by the respondent-firm to the IOC was liable to service tax or not?

11. Having regard to the rival contentions of the learned Counsel for the parties, after considering the record in relation to legal provisions, we are of the considered opinion that the service tax is leviable to such transport service.

12. Section 66 of the Act postulates that "on and from the commencement of this Chapter, there shall be charged a tax (hereinafter referred to as service tax) at the rate depicted therein of the taxable services provided to any person by the person responsible for collecting the service tax." The method of calculation of valuation of taxable services has been provided u/s 67 of the Act.

13. Sequelly, Section 65 of the Act posits that "a person responsible for collecting the service tax means a person, who is required to collect service tax or is required to pay any other sum of money and includes every person in respect of whom any proceedings under this Chapter have been taken, whereas taxable service means, any service provided (n) to any person, by a tour operator in

relation to a tour and (o) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab.

14. Likewise, Section 65 of the Act defines "tour" to mean a journey from one place to another irrespective of the distance between such places and "tourist vehicle" has the meaning assigned to it in Clause (43) of Section 2 of the Motor Vehicles Act. Section 65 defines "tour operator", to mean 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 tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder. Similarly, "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs.

15. Thus, a co-joint reading of these provisions would reveal that the service provided by a tour operator in relation to a tour by a rent-a-cab scheme operator in relation to the renting of cabs is liable to pay the service tax under the Act. Meaning thereby, since it is not a matter of dispute that the respondent-firm was providing transport services to the IOC on contract basis, so, it was liable to pay the service tax during the relevant period, as urged on behalf of the revenue.

16. As indicated earlier, the Commissioner (Appeals) dismissed the appeal of the respondent-firm, vide order (Annexure A2), the operative part of which is, reproduced as under:

As regard imposition of penalty, it has been pleaded that the appellant had no intention to evade service tax and that appellant was not aware about service tax payable on service provided by him. I observe that in this case Adjudicating Authority imposed penalty u/s 76 of the Act which does not prescribe "intent to evade tax" as an essential prerequisite for imposition of penalty and also ignorance of law is not a reasonable cause for failure to comply with statutory requirements. I also observe that Hon"ble Supreme Court in the case of Gujarat Travancore Agency, Cochin Vs. Commissioner of Income Tax, Kerala, Ernakulam, has held that in the absence of any indication in the language of the statute is sufficient for imposition of penalty. Thus, I find that contentions raised by the appellant on the imposition of penalty, do not sustain and also various judicial pronouncement relied upon by the appellant do not come to the rescue. As such since contravention of statutory provisions by the appellant stand proved, penalty action against the appellant is justified. However, I note that Section 76 of the Act at the relevant time provided for a minimum penalty of Rs. 100/- per day and a maximum penalty of Rs. 200/- per day subject to an upper ceiling of an amount equivalent to service tax not paid. I further note that service tax involved in this case is Rs. 93425/-. Thus overlooking at the facts of the case and also taking into account the relevant statutory provisions, I find that imposition of penalty amounting to Rs. 93425/- by the Adjudicating Authority is legally valid and justified.

In view of foregoing Order-in-Original No. 52/DC/ST/2001 dated 31.12.2001 is upheld and appeal filed by the appellant is dismissed.

Appeal dismissed.

17. In other words, the Commissioner (Appeals) has recorded valid reasons but the Tribunal has just ignored the legal position, mainly on the ground that the cabs were not leased out by the respondent for any interval of time for use by the IOC according to its discretion and service tax is not imposeable. Here, to us, the Tribunal has fell in legal error in this regard.

18. An identical question arose for determination before the High Court of Judicature at Madras in Secy.Federn.of Bus-Operators Assn.of T.N's case (supra). Having considered the relevant provisions, it was ruled as under:

The contention is undoubtedly correct. While in the unamended provision, there is no reference to a "tourist vehicle" at all, the concept of "tourist vehicle" is now introduced in Section 65(51) and a subtle change has been introduced contemplating only a permit granted under the Act and the Rules in contradistinction to a tourist permit granted under the rules made under the unamended Section 65. It will be seen that under the Motor Vehicles Act, the term "tourist permit" did not occur. It occurred only in Rules 82 to 85. Perhaps, therefore, the language of the old Section 65(44) contemplated a "tourist permit" granted under the rules. By the amendment, the whole concept has been changed and what is now contemplated is only "a permit granted under the Act and the Rules". Even at the cost of repetition, we may show that a tourist permit is not granted under the Motor Vehicles Act. It is not even contemplated therein. The terminology of "tourist permit" is not to be found even in Section 88(9) of the Motor Vehicles Act. It is to be found only under the Rules 82 to 85. Therefore, it is obvious that the "tourist permit" is not required for attracting the provisions of Section 65(52) of the Finance Act as contended by the learned Counsel.

19. The observations of the aforesaid judgment "mutatis-mutandis" are applicable to the facts of this case.

20. However, the main argument of the learned amicus curiae counsel that as the respondent-firm is not holder of any kind of permit including the tourist permit issued under the Motor Vehicles Act, therefore, it is not liable to pay service tax, is not only devoid of merit but misplaced as well, because Section 65 of the Act does not talk of a tourist permit issued under Motor Vehicles Act, but it only speaks of user of the tourist vehicle by tour operator. Merely because the Motor Vehicles Act provides for granting of tourist permit, it would not automatically mean that Section 65 also contemplates only a tourist permit and not otherwise. As stated above, if the vehicle is used for providing transport service (as in the present case), then it will amount to providing taxable service under the Act and the respondent-firm was liable to pay service tax.

21. No other point, worth consideration, has been pointed out by the learned Counsel for the parties.

22. In the light of the aforesaid reasons, it is held that the indicated transport service provided by the respondent-firm to the IOC was a taxable service, the Tribunal was not correct in taking the contrary view and all the questions raised in this appeal are answered in favour of the revenue and against the assessee. Therefore, we are of the considered opinion that the impugned order of the Tribunal (Annexure A3) cannot legally be sustained, in the obtaining circumstances of the case.

23. For the reasons recorded above, the present appeal is hereby accepted, the impugned order (Annexure A3) of the Tribunal is set aside and the order (Annexure A2) of the Commissioner (Appeals) is restored.