(2010) 03 KL CK 0149

In the High Court Of Kerala

Case No : C.E.A. No. 15 of 2008

Commissioner of Central Excise APPELLANT

Vs

Shabeer Travels RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:
Finance Act, 1994 — Section 65(105)

Citation : (2011) 24 STR 171 : (2012) 34 STT 276

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P. Parameswaran Nair, for the Appellant; C.S. Gopalkrishnan Nair, for the Respondent

Judgement

Ramachandran Nair, J

1. Heard the standing counsel appearing for the appellant and the counsel appearing for the respondent.

2. The order under challenge is one issued by CESTAT holding that the respondent is engaged in travel agency business, which was brought under service tax net with effect from 10-9-2004. The respondent can be assessed for the service charges under the category, travel agency service. However according to the appellant, the respondent is engaged in business auxiliary service falling u/s 65(105)(zzb) of the Finance Act, 1994 with effect from 1-7-2005 and so much so, demand of tax under this head is tenable. We are unable to uphold the appellant''s contention, because, admittedly, the respondent is engaged in booking tickets and making arrangements for travel of passengers under agreement with a well-known travel agency, M/s. Akbar Travels. For services rendered, respondent is paid commission, mainly by Akbar Travels. The Tribunal on facts, found that the service rendered by the respondent is essentially travel agency service as agents of the main travel agency, M/s. Akbar Travels. In the eye of the Tribunal, the respondent assessee is engaged in travel agency business. We do not think that the respondent could be assessed under

business auxiliary service. Counsel for the respondent also submitted that the respondent has taken the is- sues for payment of tax for the travel agency service and in fact, excess tax paid is refunded by the Department. In the circumstances, we do not find any merit in the appeal by the Department against the order of the CESTAT Consequently, we dismiss the appeal. However, it is for the appellant to assess and levy tax for the travel agency service carried on by the respondent as well as by M/s. Akbar Travels. However, the standing counsel submitted that there is nothing on record to prove the claim of the respondent. Neither the respondent has taken any registration nor remitting any tax. It is only the failure on the part of the appellant because, the Tribunal had given freedom to the appellant to recover tax from the respondent for the travel agency service.