
(2024) 12 CESTAT CK 1226

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 60269 of 2013

**Indian Holiday Private Limited @APPELLANT @Hash Commissioner of
Central Excise, Customs Central Goods, and Service Tax-Delhi-I
@RESPONDENT**

Date of Decision : 10-12-2024

Acts Referred:

Finance Act, 1994 — Section 65(43), 65(55a), 65(115), 67, 77
Trade Marks Act, 1990 — Section 2(b)
Export of Service Rules, 2006 — Rule 3(2)

Citation : (2024) 12 CESTAT CK 1226

Hon'ble Judges : Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : R. Krishnan, Jayakumari

Final Decision : Partly Allowed

Judgement

Dr. Rachna Gupta, J

1. The present appeal has been filed to assail, the order -in- appeal (OIA) bearing number 822/ 2010 dated 21.08.2013 vide which the order confirming the demand of service tax against the appellant has been upheld.

2. The facts relevant for the present adjudication, succinctly, are as follows:

The appellants are engaged in providing Taxable Services of 'Tour Operator', 'Travel Agent', 'Air Travel Agent', 'Rail Travel Agent', ' Renting of Cab'. After risk assessment profiling of the appellant, during the course of the audit, the department observed that the appellants were not paying service tax on following:

(i) Outbound tours of Rs. 10,58,320/- calculated on the taxable value amounting to Rs. 2, 95, 98, 253/-which was collected by the Appellants from the passengers in respect of outbound tours sold during the period 10.09. 2004 to 31.03.2009.

(ii) On account of Exemption under notification number 21/ 2003-ST dated

20.11.2003 being wrongly availed by the Appellants during the financial 2007-08 for not fulfilling, the condition provided under the said notification that, "exemption shall not be available when the payment received in India in convertible foreign exchange for taxable services rendered is repatriated from, or sent outside, India". The appellants undertaking composition tour for foreign tourists for tourists in India and Nepal/ Bhutan and were receiving payments in foreign currency in India. Thus service tax amounting to 1481/- on the payments amounting to Rs. 36300/- after allowing abatement of 60% vide notification number 39/ 97 dated 22.08.97.

(iii) On services of renting of immovable property used for commercial purpose. However, the service tax on this account was paid by the appellants along with interest on being pointed out by the audit team.

(iv) On Web Domain charges paid by appellants in foreign currency, under reverse charge mechanism (RCM), for the services received from abroad the service tax amounting to Rs. 3,45,511/- on the amount of payment made to Rs. 34,088/-

3. Based on these observations, that a Demand-Cum-Show Cause Notice bearing number 62/ 2009 dated 07.08.09 was served upon the appellants, after invoking the extended period of limitation, proposing the recovery of alongwith proportionate interest and the appropriate penalties, the penalty under Section 77 of Finance Act, 1994 for not filing the service tax returns and not getting themselves registered for providing taxable services was also proposed to be imposed. The said proposal was confirmed vide Order-in-Original No. 30/2010 dated 23.09.2010. Appeal against the said order has been rejected vide the impugned order-in-appeal. Being aggrieved, the appellant is before this Tribunal.

4. We have heard Shri R. Krishnan, Advocate for the appellant and Ms. Jayakumari, AR for the respondent.

5. Learned counsel for the appellant has submitted that the demand vide the impugned show cause notice has been raised on five separate grounds. The issue of service tax with respect to the tour services provided to foreign tourist to travel in India exclusively or partly in India since amounts to export of service in terms of Rule 3(2) of Export of Service Rules, 2006 that the demand is liable to be set-aside. The issue with respect to service tax liability vis-à-vis outbound tour is already decided by the larger bench of this Tribunal in a reference arising out of Service Tax Appeal No. 386 of 2012 in the case titled as M/s Cox & Kings Limited vs. Commissioner (TAR) – Mumbai decided on 19.10.2023. With respect to the service tax demand on providing Intellectual Property Right Services, it is mentioned that the alleged trade market is not registered in India, hence, no question of IPR violation at all arises. Except for small amount of demand for the period prior 3.01.2005, the liability whereof has been considered. The entire amount of demand is prayed to be set-aside. Learned counsel has relied upon the another decision of this Tribunal in the case Akbar Travel and Tours vs.

Commissioner of Service Tax reported as 2016 (45) STR 444 (Tri.-Del.). Appeal is accordingly prayed to be allowed while set-aside the impugned order in appeal.

6. While rebutting the submission, the learned DR has mentioned that the definition of Tour Operator Service underwent a change w.e.f. 10.09.2004. The amended definition introduced the services such as Planning, Scheduling, organizing or arranging tours, arrangement for accommodation, or other similar services as Tour Operator Service, therefore, the tour itself was not a taxable event but the activities related to the arrangement of Tour would fall within the said definition. The services in question are provided by the appellant based in India to the customers also based in India, hence, the services are liable to tax. The same decision of M/s Cox & Kings Limited (supra) is relied upon the learned DR to impress upon the liability of the appellant vis-à-vis the domestic tours.

7. Having heard the rival contentions and perusing the entire records.

We frame following issues to be adjudicated:-

- (i) Whether appellant is liable to pay tax on outbound tours and for in bound tours being provided to foreign travelers
- (ii) Whether the appellant is entitled to pay service tax on domestic outbound tours
- (iii) Whether the service tax is to be paid by the appellant on the amount received as web design charges.

Issue No. 1:-

The service tax on this activity has been demanded alleging that the activity is covered under section 65(115) of the Finance Act, 1994 as amended w.e.f. 10.09.2004 on the ground that the said service has been provided by the appellant located in India and that the service provider is also located in India. We observe that Section 65(115) of the Act defines Tour Operator, Scheduling, organizing or arranging tours which may include arrangement for accommodation, sightseeing or other similar services, by any mode of transport and includes any person engaged in business of operating tours in a tourist vehicle covered by a permit granted in Motor Vehicle Act, 1988 or the Rules made thereunder. The perusal of definition makes it clear that it does automatically subject the services provided for outbound to service tax chargeability. The outbound tours are the tours which are conducted outside the territories/boundaries of India, hence, the activity of the appellant where the services are provided to the Indian as well as foreign customers to tour outside the territorial boundaries in India amounts to outbound tour.

Term tour has been defined under Section 65 (43) of the Finance Act to mean a journey from one place to another irrespective of the distances between such places. The intent of Finance Act is otherwise to tax a specified activity which undisputedly takes place in India and to exclude tax on the activity which

undisputedly does not occur in India. The Hon'ble Supreme Court in All India Federation of Tax Practitioners vs. UOI reported as 2007 (7) STR 625 (SC) clarified that the service tax is indirect tax levied on specified services provided by certain categories of person including by a company, association firm, body of individual etc. and that it is a value added tax which is a destination based consumption tax, in the sense that it is on commercial activities and not a charge on business but on the consumer and logically be leviable only on services provided within the country and that performance based services are provided by service provider including tour operators.

This principle has subsequently also been reiterating by Hon'ble Apex Court in the case Association of Leasing and Financial Service Companies vs. Union of India reported as 2011 (2) SSC 352. The definition of taxable service, therefore, has to fit within this framework for it to be applicable. Since, arrangement of tours outside the territory of India i.e the destination being outside India for outbound tours irrespective the service recipient is located in India or is a foreign traveller, the outbound tour is not liable to service tax. There is no tax activity on outbound tours in terms of Rule 3(2) of Export of Service Rules, 2005 according to which the taxable service which is partly performed in India has also to be considered as the activity performed outside India. Notification No. 09/2005 dated 03.01.2005 also extends exemption from service to outbound tours. The issue is no more res-integra as stands decided in M/s Cox & Kings Limited (supra). Issue no. 1 stands decided in favour of appellant.

Issue No. 2

In the above discussion on Issue No. 1 vis-à-vis meaning of tour operator, tour and that the service tax is destination based it stands clear when both the receiver and provider are in India or at least, the provider of tour operator is in India and the tour is the inbound tour i.e. for the places to be visited in India, then only the touring activity is liable to tax. This issue also gets covered in the decision of M/s Cox & Kings Limited (supra). Though the definition of tour operator has undergone several changes w.e.f. 1997 to till 2012 as follows:-

01.09.1997 TO 15.10.1998

16.10.1998 TO 09.09.2004

10.09.2004 TO 15.05.2008

16.05.2008 TO 30.06.2012

Tour operator means a person who holds a tourist permit granted under the rules made under the Motor Vehicles Act, 1988.

Tour operator means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor

Tour operator mean any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for

Tour operator mean any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for Vehicles Act, 1988 (59 of 1988) or the rules made thereunder.

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 covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder.

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 (59 of 1988) or the rules made thereunder (amendments are emphasised).

The insertion of clause (q) in Section 67 of Finance Act provides that the value of tour operator service will not only include the gross amount charged for the tour but also the charges for accommodation, food or any other facility provided in relation to such tour, we hold that the amount charged by the appellant for arranging domestic tour is liable to be taxed. In terms of TRU clarification No. 43/10/1997 dated 22.08.1997 the service tax on the services rendered by tour operators is only on tour services rendered in India in respect of tour within Indian Territory (inbound tours). The services rendered by tour operators in respect of outbound tourism i.e. tours abroad do not attract to service tax. In case of composite tour which combined tour within India and also outside India, the service tax will be leviable only on services rendered for tours within India. Separate billing has to be done by the tour operators for services provided in respect of tours within India. The order under challenge confirming the demand on inbound tours, is therefore, upheld.

Issue No. 3

The Department has treated the web domain charges to have been received against rendering intellectual property services, we observe that the intellectual property right service has been defined under Section 65 (55a) of Finance Act 1994 to mean any right to intangible property, namely, trademarks, design, patent or any other intangible property under any law for the time being in force. The term trademark is defined under clause 2(b) of Section 2 of Trade Marks Act, 1999 to mean a mark capable of being represented graphically and which is capable of distinguishing goods or services of one person from those of others and may include shape of goods, the packing and combination of colours. The definition makes it clear that the trademark indicates relationship between goods or services and proprietor of such trademark.

The domain name is the address of the website hosted by an organizing or internet to connect users specific website and does not include internet backbone

or excess services it's a kind of rental which one has to pay for using the web address and the domain name has to be renewed after certain period of time (1 to 3 years). This observation in the light of above definitions is sufficient for us to hold that the domain name is not a trade mark as neither user thereof nor the provider of the services is the proprietor of the domain name. Hence, any amount paid for using the domain name cannot be called as an amount paid for receiving the taxable service of intellectual property right. This observation are sufficient for us to hold that the demand on Issue No. 3 is not sustainable. Order to that extent is liable to be set-aside.

The appellant has since conceded the demand of Rs. 7,046/- along with interest of Rs. 1,646/- for the period 2007 to 2008 towards the service tax on services of renting of immovable property used as commercial property. We do not find any reason to interfere into the findings confirming the said demand.

8. As a result of entire above discussion, the demand with respect to outbound tours and the demand with respect to web domain charges is hereby ordered to be set-aside, however, the demand with respect to domestic tours provided to Indian travellers and the demand on renting of immovable property is hereby confirmed. The order under challenge is partly set-aside and partly sustained. Consequently, the appeal also stands partly allowed.

(Order pronounced in the open Court on 10.12.2024)