(2016) 08 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 265 Of 2010

M/s. Air India APPELLANT

Vs

C.S.T. Delhi RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzzo), 65(113), 65(115), 77

Citation : (2016) 08 CESTAT CK 0004

Hon'ble Judges : S. K. Mohanty, J;V. Padmanabhan, Technical Member

Bench : Division Bench

Advocate : P. K. Sahu, Yogesh Agarwal

Final Decision : Allowed

Judgement

1. Brief facts of the case are that the appellant is engaged in the business of transportation of passengers and goods by aircraft, which falls under the

taxable category as defined under Section 65(105)(zzzo) of the Finance Act, 1994. Besides, the appellant also offers promotional schemes to its

customers from time to time, which include coupon for staying in hotels and other facilities. In some of the promotional schemes, the appellant offers

transportation of passengers to various tourist destinations along with other services, against consideration for a lump sum amount. The promotional

schemes offered by the appellant was considered by the department as a taxable service, classifiable under the category of â??Tour Operator

Serviceâ??. For the period 01.09.2004 to 31.03.2007, the department initiated Show Cause proceedings, seeking confirmation of the Service Tax

demand. The SCN dated 11.01.2008 issued in this regard, culminated in the adjudication order dated 25.11.2009, wherein Service Tax demand of

Rs.12,08,88,860/- was confirmed along with interest. Besides, equal amount of penalty was imposed under Section 78 of the Finance Act, 1994 and

Rs.1,000/- under Section 77 of the said Act. Feeling aggrieved with the adjudication order, the appellant has preferred the present appeal before this

Tribunal.

2. Sh. P.K. Sahu, Ld. Advocate appearing for the appellant submits that the appellant provides the services of transportation of passenger by air and

goods service, for which it is separately registered with the service tax department and the appellant discharges appropriate service tax liability

attributable to such taxable service. He submits that pre-planned package tours provided by the appellant does not fit into the definition of Tour

Operator Service inasmuch as the appellant is not engaged in the business of planning, scheduling, organizing or arranging tours. Ld. Advocate further

submits that the issue involved in this appeal is squarely covered by the decision of this Tribunal in the case of Jet Airways India Ltd. vs CST-2016

(41) STR 225 (Tri. Mum.).

3. Sh. Yogesh Agarwal, the Ld. DR for Revenue, on the other hand, submits that the package features issued by the appellant provide the all inclusive

package rate, which includes 3 Nights and 4 Days stay at a particular destination, and that, the passenger has no liberty to chose the hotel of his

choice and airlines also tied up for the hotels for accomplishing the purpose of package. Thus, he submits that since the passenger is not concerned

with the planning and scheduling of the tour, which is managed by the appellant, the activities squarely fall under the definition of Tour Operator

Service for the levy of service tax. To support his submission that the activity of the appellant falls under the taxable category of Tour Operator

Service, the Ld. Advocate has relied on the judgment of Honâ??ble Allahabad High Court in the case ofT ouraids (I) Travel Services vs CCE 2014

(35) STR 234 (All.).

4. We have heard the Ld. Counsel for both the sides and examined the case records.

5. Section 65(113) of the Finance Act, 1994 defines the term â??Tourâ?? â??to mean a journey from one place to another irrespective of the distance

between such placesâ??. The â??Tour Operatorâ?? has been defined under Section 65(115) ibid to mean â??any person engaged in the business of

planning, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of

transport, and includes and person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicle

Act, 1988 (59 of 1988) or the rules made thereunderâ??. On a conjoint reading of clauses 113 and 115 of Section 65 ibid, it reveals that the person

providing business of planning, scheduling, organizing or arranging tours should fall under the ambit of taxable category of Tour Operator Service for

the purpose of payment of service tax. On perusal of the Circular No.347 dated 15.03.2005 issued by the appellant, which is placed at page 84 in the

appeal memorandum, we find that various packages provided by the appellant are itemized therein, which are extracted herein below for ease of

reference: Â

Â· Goa Flyways are available ex-Ahmadabad, Bangalore, Bhavnagar, Chennai, Delhi, Hyderabad, Jaipur, Jamnagar, Kolkata, Kozhikode, Lucknow,

Mumbai and Nagpur. Â

Â· The basic package being offered includes return airfare in economy class (point of origin to Port Blair and back), airport transfers, room meals

as per plan and other add-ons. (please refer the Package Rate Inclusions Document for complete details). Â

Â· The package cost has been worked out taken into account the Normal or Promotional/ Excursion/ Round trip fare, wherever applicable. Â

Â· Driver carrying a placard with passengerâ??s name will be waiting at the airport exit gate. Â

Â· The packages between the cities mentioned in the annexure are valid, subject to the schedules between the concerned city pairs being

operational, during the package period. Â

Â· While booking a package, confirmation of seats on the entire itinerary must be ensured. Â

Â· The payment for hotel stay in regard to children will be made directly to hotel. The applicable charge for children is mentioned in the Package

Rate Inclusions Document. Airfare is payable extra.

Â· Infants below the age of 2 years will be accommodated by the hotel on complimentary basis â?" Airfare is payable extra.

6. On perusal of the package features mentioned in the above Circular, it transpires that the appellant is not providing any consultancy in the nature of

planning, scheduling, organizing and arranging tours on behalf of a particular tour for the passengers. Thus, the activities provided by the appellant will

fall outside the scope and ambit of â??Tour Operator Serviceâ??. We find that this Tribunal in the case of Jet Airways India Ltd. (supra) has held

that various tour packages provided by the airlines to the passengers (similar to the package offered by the appellant) shall not be covered under the

purview of Tour Operator Service. The relevant paragraphs in the said decision are extracted herein below:

â??6.1 It can be seen from the above reproduced definition that the said definition would cover a person who is engaged in the business of

planning, scheduling, organizing or arranging tours and who is engaged in the business of operating tours in tourist vehicle or a contract

carriage. As already produced herein above, appellant is operating â??airlinesâ?? which undertakes transportation of passengers by air. In

order to enhance their business of selling airline tickets, appellant had offered â??Jet Escapesâ? Packages to their passengers for a

specified destination. On perusal of â??Jet Escapes Packageâ? details as downloaded from website, we find that the said advertisement

specifically states that â??Return air travel in Economy class, inclusive of taxes, Airport transfers, Hotel accommodation with breakfast,

sightseeing as applicableâ? but does not indicate that they would plan, schedule or organize the tours for the passengers. Further the

definition also mandates for the services to be rendered by persons engaged in business of operating tours in a tourist vehicle or a contract

carriage. It is on record that the passengers when they want to opt for â??Jet Escapes Packageâ?, organize own travel dates and appellant

is not helping them in planning or organizing or scheduling of tours. We find that though not on the very same issue, this Bench in the case

of Divisional Controller (supra) was considering the services rendered by the appellant therein as to whether this service would fall under

the category of â??Tour Operator Servicesâ?. The appellant in that case was providing contract carriage and stage carriage to various

individuals/customers and it was considered as the said service would fall under the category of â??Tour Operator Serviceâ?. The Bench

after considering the definition as was during the relevant period held as under:-

â??6.1 We have considered the rival submissions. Undisputedly the period involved in this case is from 1-4-2001 to 31-3-2008. The

definitions of Tour Operators at the relevant period are reproduced hereunder for convenience of reference.

(i) the position from 1-4-2000 to 9-9-2004 â??any person engaged in the business of operating tour in a tourist vehicle covered by a permit

granted under the Motor Vehicles Act, 1988.â??

(ii) the position from 10-9-2004 onwards : â??persons who are engaged in the business of planning, scheduling, organizing or arranging

tours by any mode of transport and includes any person engaged in the business of operating tours in a tourist vehicle.â??

6.2 From the records we find that the assessees are only renting their vehicles. We also find that the department could not bring out on

record that the assessees are engaged in the business of planning, scheduling, organizing or arranging tours. In these circumstances, the

assessees cannot be termed as tour operators. Therefore, the demands of Service Tax against them are not sustainable in law. As the

demands are not sustainable, the penalties also do not survive. In these circumstances, the assesseesâ?? appeals are allowed and the

Revenueâ??s appeals are dismissed.â??

6.3 The learned departmental representativeâ??s reliance on the judgment of the Tribunal in the case of Cox and Kings (supra), we find

that the said judgment may not take the Revenueâ??s case any further inasmuch as the issue involved in that case was an outbound tours

i.e. tours emanating from India and being sightseeing tours to various countries beyond India would fall under the category of tour

operators service and would be considered as not taxable as they are consumed beyond the territory of India. We find the facts in that case

was totally different but the Bench had recorded that planning, scheduling and organizing tours are not taxable services is also irrelevant.

In the case in hand as we have recorded above the appellant herein has not planned, scheduled or organized tours for their passengers. In

our considered view the ratio of this Tribunalâ??s judgement in the case of T.N. State Trans. Corpn. Kumbakonam Ltd. (supra) will be

applicable in the case in hand and we have to hold that the appellant is not covered under the category of â??tours operator serviceâ??.â??

7. The judgment of Honâ??ble Allahabad High Court in the case of Touraids (I) Travel Services (supra) relied on by the Ld. AR is distinguishable

from the facts of the present case inasmuch as the judgment referred to the preamended definition of Tour Operator Service effective upto

10.09.2004 where the transportation was confined to the services concerning transportation and not relating to the air travel with ancillary features of

providing accommodation and other facilities. Further, the features discussed in the definition of Tour Operator Service, namely, planning, scheduling,

organizing and arranging tours have not been specifically dealt with by the Honâ??ble High Court in the said decided case.

8. In view of foregoing discussions, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in

favour of the appellant.

(Dictated and pronounced in the open court)