

(2006) 11 KAR CK 0057
In the Karnataka High Court

Case No : Writ Appeal No. 1778 of 2006 in Writ Petition 7714 of 2003

Suresh Kumar Sharma

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Finance Act, 1994 — Section 65 (76), 69

Citation : (2007) ILR (Kar) 40 : (2007) 2 KCCR 1039 : (2007) 5 STR 254 :
(2007) 7 STT 249

Hon'ble Judges : V. Gopala Gowda, J;C.R. Kumara Swamy, J

Bench : Division Bench

Advocate : C.B. Srinivasan, for the Appellant;

Final Decision : Dismissed

Judgement

1. The Appellant is a tourist operator recognised by the Government of India and is operating in South India. The Union Government imposed service tax on the tour operators. Pursuant to that, notice was issued to the Appellant to register u/s 69 of the Finance Act, 1994 for the purpose of levying service tax. The Appellant and other operators filed writ petitions inter-alia to quash the notice. The learned single Judge by order dated 22-9-2006 dismissed the writ petitions. The Appellant alone has filed this writ appeal challenging the said order on various grounds.

2. We have heard the learned Counsel for the parties and perused the order of the learned single Judge. Prima facie we find that the same does not warrant interference. The learned single Judge has considered all relevant provisions of Finance Act, the contentions urged, decisions relied upon and assigned valid and cogent reasons in support of his conclusions. The law on the point is correctly applied. The applicable provisions are properly interpreted and a light decision is rendered.

3. The definition of "Taxable Service" is clear. It means any service provided to

any person by a tour operator in relation to a tour. As per Section 65(76) of the Act, "tour" means journey from place to place. The services rendered by a tourist operator are, carrying the tourists to tourist spots for sight seeing, purchasing entry or admission tickets, explaining the importance of the places, the specialty or sanctity etc., through guides, providing boarding and lodging facilities at convenient places and rendering such other services. For that purpose, a tourist operator collects amount from the tourists. Whatever service tax levied on the tourist operator will be collected from the tourists and the operator does not pay from his pocket. Therefore, the contention of the Appellant that he is not tendering such services and therefore he is not liable to pay the service tax, is wholly untenable. Therefore, the learned single Judge has lightly rejected the contention and we cannot find fault with the same.

4. The tax and fee are imposed by the State for raising revenue. The tax is imposed for public purpose for raising general revenue of the State. Every taxing statute has a charging section and provision laying down the procedure to access the tax and penalty and method of their collection and may also contain provisions to prevent pilferage of revenue. Nature of tax imposed by the statute has to be determined by examining the pith and substance of the statute and by paying more attention to the charging section than to the basis of machinery adopted for assessment and collection of tax. There are three components of a taxing statute viz; subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there is any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the statute. There are three stages in the imposition of tax namely (1) declaration of liability in respect of persons or property, (2) assessment of tax that quantifies the sum which the person liable has to pay, and (3) methods of recovery if the person taxed does not voluntarily pay. The taxing statute has to be strictly construed. In this background, let us examine whether the service tax imposed by virtue of tourist vehicle permit is proper or not. The taxing authority has levied service tax based on tourist permit. In our view, it is not proper for us to go behind the permit and hold an enquiry as to the real nature of business that is carried on by the appellant by virtue of the permit. Such being the case, the appellant has not made out any ground to interfere with the impugned order.

5. The learned single Judge has rightly rejected the contention of the Appellant that levy of service charge amounts to levy of tax. Tax is totally different from service charge. Both components cannot be combined together. It is rightly held that there is no element of sale or purchase in the matter of service tax. The decision reported in Secy. Federn. of Bus-operators Assn. of T.N. Vs. Union of India (UOI), is aptly applied. In that case it is held that the service tax is unique and could not be said to be a part of Entry 56. It is further held that it is enough if an operator is in the business of engaging taxis for the customers and giving them this service. In view of this categorical declaration of law, the stand taken by the Appellant cannot be countenanced. The impugned order is also in

conformity with the law laid down by the Apex Court in the cases reported in AIR 2005 SCW 2051 and Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, .

6. The order of the learned single Judge is a well considered order. Each aspect is considered elaborately. The decision rendered is legally valid and warrants no interference. We are in full agreement with the conclusion arrived at by the learned single Judge. The appeal is devoid of merit and liable to be dismissed.

7. Accordingly, the appeal is dismissed.