



- S. Tax

केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,

PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,

नारायण उपाध्याय मार्ग, भावनगर-364001

NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

दूरभाष : (0278) 2523627 फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाईल सं. V/15-119/ STC(Adj)/TOU/2004-05

F. No.

आदेश की तारीख : 15/12/2011

Date of Order :

जारी करने की तारीख : 15/12/2011

Date of Issue :

पारितकर्ता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त, केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 41/BVR/Commissioner/2011

1. यह प्रति उस व्यक्ति को, जिसके लिए यह आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

2. इस मूल आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित ढंग से कर सकता है

8

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलाय न्यायाधिकरण को अपील :

3. वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत अपील निम्न को की जा सकती है।

1। पश्चिम क्षेत्रीय पीठ, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) ऑ 20, न्यू मेन्टल अस्पताल कंपाउन्ड, मेघाणीनगर, अहमदाबाद 380016।

2। अपीलीय न्यायाधिकरण का वित्त अधिनियम, 1994 की धारा 86 की उप धारा (1) के अंतर्गत अपील, सेवाकर नियमावली, 1994 के नियम 9(1) के अंतर्गत निर्धारित एस.टी.5 में, चार प्रतियों में आदेश प्राप्ति के दिनांक से तीन माह के भीतर की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निर्धारित किए अनुसार शुल्क लगा होगा, जो कि जिस स्थान पर न्यायाधिकरण की न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के ब्युसापेठ के सहायक रजिस्ट्रार के नाम से निर्धारित फीस रेखांकित बैंक ड्राफ्ट के रुप में भेजी होगी।



- 3। वित्त अधिनियम, 1994 की धारा 86 की उपधाराओं (2) एवं (2ए) के अंतर्गत सेवाकर नियमावली, 1994 के नियम 9(2) के अंतर्गत निर्धारित किए गए फॉर्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क या आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश के प्रति (उनमें से एक प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उपआयुक्त, केन्द्रीय उत्पाद शुल्क को अपीलीय न्यायाधिकरण में आवेदन करने के आदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड / आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।
4. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची1 के अंतर्गत निर्धारित किए अनुसार यथास्थिति मूल आदेश या न्यायनिर्णयनकर्ता प्राधिकारी के आदेश की प्रति पर रुपये 6.50/ का न्यायालय टिकट लगा होना चाहिए।
5. ब्यौरापूर्ण करने हेतु सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 की ओर ध्यान आकर्षित किया जाता है।

To,
M/s. Gujarat Travels Agency,
Near Rajshree Cinema,
Sir Pattani Road,
Bhavnagar.

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice F. No. BVN/STAX/DIV/II/013/2004-05/Inv. dated 23.03.2005.



BRIEF FACTS OF THE CASE :-

M/s. Gujarat Travels Agency, Near Rajshree Cinema, Sir Pattani Road, Bhavnagar (hereinafter referred to as "the Service Provider") are providing service of "Tour Operator Service" which appeared taxable as per Section 65 of Chapter V of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as "Act").

2. The Service Provider was providing the 'Tour Operator Service' since 01.04.2000 without following the provisions of the Act in as much as they -

- (1) did not pay the Service Tax as per Section 68 of the Act on the services rendered by them
- (2) did not take the registration as per Section 69 of the Act,
- (3) did not file Returns as per Section 70 of the Act,

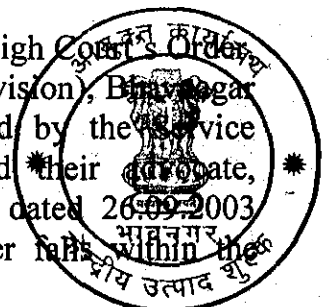
3. The Service Provider was requested by the department vide various letters / notices to get themselves registered and pay Service Tax as per the provision of the Act. Aggrieved by the action of the Department, the Service Provider filed Special Civil Application (No. 11591 of 2003) (Petitioner No. 4) alongwith Akhil Gujarat Pravasi Vahan Sanchalak Maha Mandal, Ahmedabad (Petitioner No. 5) and other Travels companies. The Hon'ble High Court of Gujarat vide Order dated 27.08.2003 recorded the understanding and consensus arrived at between the petitioners and the respondents and disposed off the petition as withdrawn.

4. The gist of the understanding and consensus arrived at between the petitioners and the respondents were that :-

"The learned counsel for the petitioners submitted that out of five petitioners, Petitioners No. 1 to 4 have received various notices annexed to the petition regarding collection and/or levy of Service Tax. And that the petitioners proposed to establish by producing relevant evidence that their buses were not "Tourist Vehicles" within the meaning and definition of the provisions of the Act read with relevant provisions of the Motor Vehicle Act, 1988 and rules made thereunder. And that representations along with entire evidence shall be produced before the officer concerned by the petitioners and they would be required to be heard on the basis of such evidence.

The respondents concerned shall have no objection to receiving and considering the proposed representations as also the evidence that may be produced by Petitioner No. 1 to 4 and decide the issue that may be raised in accordance with law after affording an opportunity of being heard to the petitioners. If the proposed representations were made within a period of 10 days, the officer concerned shall hear and decide the same as expeditiously as possible preferably within a period of one month. It was also stated that even as the proposed applications / representations of petitioners No. 1 to 4 would be considered, in the mean time, the notices at Annexures B, C, D and E which are impugned in the petition, shall not be pursued for taking any coercive or penal action".

5. Based on the consensus recorded in the Hon'ble High Court's Order, the Assistant Commissioner of Central Excise (Service Tax Division), Bhavnagar considered the representations alongwith evidences produced by the Service Provider and after hearing the said Service Provider and their advocate, adjudicated the case vide Order-in-Original No. 70/2003-04 dated 26.09.2003 holding that the services being rendered by Service Provider falls within the



meaning of "Tour Operator Service" as defined in Section 65(115) of the Act, and they are liable to take Registration under Section 69 of the Act and pay the Service Tax under Section 68 of the Act and consequently they are liable to follow various provisions of the Act and Rules made thereunder.

6. The Service Provider did not take registration and discharge their Service Tax liability as Tour Operator since 01.04.2000 despite explicit order dated 26.09.2003 of the Assistant Commissioner of Central Excise (Service Tax Division), Bhavnagar. Accordingly, the Service Provider was persuaded by the department to furnish the details of the value of Tour Operator Service provided by them. The Service Provider, vide letter dated 24.02.2005 furnished the year-wise figures of their income as under :-

Financial Year	Amount (₹)
31.03.2001	2,68,51,458/-
31.03.2002	2,72,73,585/-
31.03.2003	2,61,98,021/-
31.03.2004	3,12,06,953/-
Total	11,15,30,017/-

7. A Show Cause Notice No. BVN/STAX/DIV/I/013/2004-05/Inv. dated 23.03.2005 was issued by the Assistant Commissioner, Central Excise (Service Tax Division), Bhavnagar asking the Service Provider as to why :-

- (1) the Service Tax amount should not be determined as per Section 73(2) of the Act on the taxable value of ₹ 11,15,30,017/- for rendering Tour Operator Service during the period from 01.04.2000 to 31.03.2004 at the appropriate rates provided under Section 66 of the Act alongwith Education Cess as provided under Section 91 read with Section 95 of the Finance Act, 2004 and should not be recovered from them,
- (2) interest at the appropriate rates on Service Tax should not be recovered under Section 75 of the Act,
- (3) penalty should not be imposed upon them under Section 76, 77 & 78 of the Act.

8. The amount of Service Tax liable to be recovered on the taxable value of ₹ 11,15,30,017/- have been quantified and accordingly Service Tax of ₹ 61,79,265/- is liable to be recovered under this Show Cause Notice, as per calculation given herein below :-

Sr. No.	Year (Period covered)	Taxable Value declared (₹)	Rate of Service Tax	Service Tax payable / recoverable (₹)
1	2000-01	2,68,51,458/-	5%	13,42,573/-
2	2001-02	2,72,73,585/-	5%	13,63,679/-
3	2002-03	2,61,98,021/-	5%	13,09,901/-
4	2003-04			
(a)	01.04.2003 to 12.05.2003 (42 days)	35,90,937/-*	5%	1,79,547/-
(b)	13.05.2003 to 04.02.2004 (268 days)	2,29,13,598/-*	8%	18,33,088/-
(c)	05.02.2004 to 31.03.2004 (55 days)	18,80,967/-* (40% of 47,02,418/-)	8%	1,50,477/-
TOTAL SERVICE TAX PAYABLE / RECOVERABLE				₹ 61,79,265/-



WRITTEN SUBMISSION:-

9. Shri Ramkrishna B. Dave, Advocate of the Service Provider vide letter dated 02.04.2005* informed that they have preferred an appeal against the Order-In-Original No. 70/2004 dated 29.09.2003.

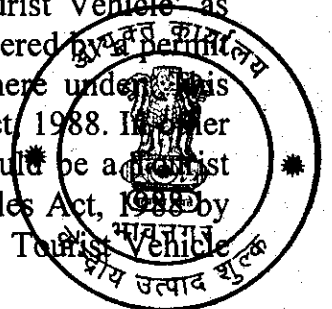
10.1 The Government of India, Ministry of Finance, Department of Revenue, New Delhi vide Notification No. 30/2005-ST dated 10.08.2005 revised the powers delegated to different adjudicating authorities viz. Assistant / Deputy Commissioner, Joint / Additional Commissioner and Commissioner of Central Excise. Since, the amount of Service Tax involved in this show cause notice for the purpose of adjudication was more than ₹ 50 Lakhs, the case falls within the competency of the Commissioner. Accordingly, vide letter 18.10.2005, the Service Provider was requested to file written submission. Shri Ramkrishna B. Dave, Advocate of the Service Provider submitted written submission vide letter dated 22.10.2005 wherein it has been interalia submitted as follows :-

10.2 It has been submitted that the Order-in-Original No. 70/2004 dated 29.09.2003 of the Deputy Commissioner has been challenged by them. The issue under challenge i.e. 'whether the services operated by Contract Carriage Omni Buses fall within the category of a Tour operator', is not decided in Appeal.

10.3 None of the vehicle under dispute is a tourist vehicle as defined in Section 2(43) of the Motor Vehicles Act, 1988. The said vehicles are Contract Carriages, but none of them has been constructed or adapted and equipped and maintained in accordance with such specification as provided under Rule 128 of Central Motor Vehicles Rules, 1989. They had already produced copies of certificate issued by RTO certifying that these vehicles are not tourist vehicles, since these vehicles are not complying with the specifications mentioned under Rule 128.

10.4 They submitted that reliance placed by the adjudicating authority upon the decision of Shri Pandiyan Travels Vs. CCE, Chennai-II was not correct since this decision was based on Division Bench judgement of the same High Court in the case of Secretary, Federation of Bus Operators' Association of Tamilnadu, Chennai Vs. Union of India. Since, the Division Bench had decided that if the Contract Carriage do not comply Section 2(43) read with Rule 128 of the said Rules, such vehicles are not required to pay the Service Tax. It has been provided under Notification No. 25/2004-ST dated 10.9.2004 in Clause (g) that services provided by the Tour Operator, other than a Tour Operator engaged in business of operating tours in a Tourist Vehicle covered by the permits granted under Motor Vehicles Act, 1988 or rules made there under, in relation to a tour, are exempted from Service Tax leviable thereon prior to period of 10.9.2004 and the definition of 'Tour Operator' has been amended so as to include a person engaged in the business of planning, scheduling and organizing or arranging tours by any mode of transportation including tourist vehicles. These two Notifications supported the argument made by them.

10.5 They quoted the definitions of 'Tour', 'Tourist Vehicle', 'Tour Operator', and 'Taxable Service' and submitted that for the purpose of levy of Service Tax under 'Tour Operator', the vehicle should be 'Tourist Vehicle' as contemplated under Section 2(43) of Motor Vehicles Act and covered by permit granted under Motor Vehicles Act, 1988 or the rules made there under. This permit need not be a Tourist Permit under the Motor Vehicles Act, 1988. In other words, what is required is not a Tourist Permit, but vehicle should be a Tourist Vehicle within the meaning of Section 2(43) of the Motor Vehicles Act, 1988 by the Tour Operator in his business. As per Section 2(43) ibid, the Tourist Vehicle



means a contract carriage constructed or adapted and equipped or maintained in accordance with such specification as may be prescribed in this behalf. The specifications of Tourist Vehicle have been prescribed under Rule 128 of the Central Motor Vehicle Rules, 1989.

10.6 It has been submitted that any vehicle which answers the description of a Tourist Vehicle u/s 2(43) of Motor Vehicles Act, 1988 read with Rule 128 of Central Motor Vehicles Rules, 1989, used under a contract would become a Tourist Vehicle and once it becomes a tourist Vehicle, so long as it is used under any permit under the Motor Vehicles Act, by a person who is engaged in the business of operating tours, then the requirement of Finance Act, 1994 under taxable service within the scope of 'Tour Operator' would be complete. The Contract Carriage vehicles are covered under Service Tax, provided those are constructed or adapted and equipped or maintained in accordance with such specifications specified under Rule 128 of the Central Motor Vehicles Rules, 1989.

10.7 They submitted certificates issued by the Registering Authority, Bhavnagar in respect of vehicles owned by them to the effect that passenger buses owned by them were registered as a Contract Carriage under Clause 2(7) of the Motor Vehicles Act, 1988, which is not covered as 'Tourist Vehicle' defined under clause 2(43) of the Motor Vehicles Act, 1988 read with Rules 82 to 85 and 128 framed under Central Motor Vehicle Rules, 1989.

FURTHER WRITTEN SUBMISSION:-

11.1 Shri Ramkrishna B. Dave, Advocate submitted further written submission dated 28.11.2005 wherein it has been stated that the Show Cause Notice is bad in law and facts on the following grounds :-

- (1) The vehicles owned by M/s. Gujarat Travels are not tourist vehicles, as defined under Section 2(43) of the Motor Vehicles Act, 1988.
- (2) The Registering Authority has issued a certificate with regard to the class of vehicle owned by M/s. Gujarat Travels that these vehicles are not Tourist Vehicles.
- (3) M/s. Gujarat Travels is carrying on business of transportation of passengers from one place to another on collection of separate fares from each passenger. The said operation is covered under the definition of a Stage Carriage, and therefore, cannot be included in the definition of a Tour Operator.
- (4) The Ministry of Finance, Govt. of India had issued a Notification No. 25/2004-Service Tax, whereby services provided by any person by a Tour Operator other than a Tour Operator engaged in business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or rules made there under in relation to a Tour are exempted from levy of service tax thereon u/s 66 of the Finance Act, prior to the period of 10th September, 2004.

11.2 They produced the following documents in support of their above stated submission :-

- (1) Checking Memo issued by the Transport Authority and Police Officers stating that the vehicle is being used to carry passengers on payment of separate fares and thereby the said vehicle is being used as a Stage Carriage in breach of condition of permit.



- (2) Order No. 251/2004 dated 31.03.2004 passed by the Deputy Commissioner, Service Tax & Central Excise Division, Agra (in respect of one M/s. Amar Travels, Agra) wherein it was observed that party had not applied for registration as they were not a Tour Operator within the meaning of Service Tax. The modus operandi of the applicant's business is transporting passengers which is same as in the State Road Transport Corporation and therefore they are not conducting / organizing tour for a fixed group of persons. The Deputy Commissioner, Agra had dropped the proceedings initiated against the party on this ground only and held that they cannot be included in the definition of a Tour Operator.
- (3) Copy of Notification No. 25/2004-Service Tax dated 10.04.2004 issued by Ministry of Finance, Government of India.
- (4) Certificates stating the classification of the vehicle issued by Regional Transport Officer (Registering Authority), Bhavnagar for all the 19 vehicles owned by M/s. Gujarat Travels.
- (5) A copy of judgment of the High Court of Madras passed in Secretary, Federation of Bus Operators' Association of Tamil Nadu Vs. Union of India reported in 2001 (134) ELT 618 (Mad.). It was submitted that Para 14, 24, & 36 of the judgment made it very clear that if the person does not possess any vehicle which complies the provisions of Section 2(43) read with Rule 128 will not render liable to pay the Service Tax. It was also represented that the Deputy Commissioner while issuing the said notice has wrongly interpreted the decision in the case of Shri Pandian Travels Vs. CCE, Chennai-II reported in 2004 (163) ELT 109 (Mad.).

11.3 It was also submitted that the Commissioner (Appeal), Baroda had supported the say of M/s. Ghanshyam Travels and have concluded that if the vehicles owned by the party does not comply with the definition of Tourist Vehicle, as given in Section 2(43) of the Motor Vehicles Act, 1988 read with Rule 128 of the Central Motor Vehicles Rules, they are not liable to get registered and pay Service Tax under the category of a Tour Operator.

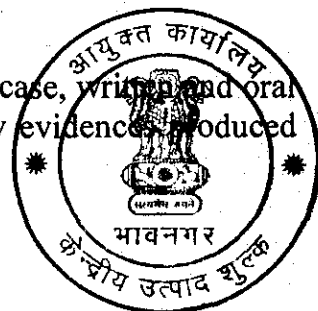
11.4 In view of this submission, the Service Provider submitted that they do not fall within the definition of a Tour Operator and are not liable to pay Service Tax under the category of the Tour Operator, therefore, the question of payment of penalty of interest does not arise. It was requested to drop the proceedings under the Show Cause Notice dated 23.03.2005.

PERSONAL HEARING :-

12. The Personal Hearing in the matter was held on 09.12.2011 wherein Shri Ramkrishna B. Dave, Advocate and Shri Abbasbhai Metar, Partner of the Service Provider appeared and submitted copy of Hon'ble CESTAT's Order No. A/328-329/WZB/AHD/2011 dated 18.02.2011 in their own case and requested to drop the proceedings initiated vide Show Cause Notice dated 23.03.2005.

DISCUSSION & FINDINGS :-

13. I have carefully gone through the record of the case, written and oral submissions made by the Service Provider and documentary evidences produced in support of their submissions.



14. I find that the issue involved in this Show Cause Notice is whether the Service Provider is covered within the ambit of 'Tour Operator' as defined under Section 65(115) of the Finance Act, 1994 during the relevant period and if so whether Service Tax of ₹ 61,79,265/- calculated at appropriate rate on taxable value of ₹ 11,15,30,017/- received towards services rendered during the period from 01.04.2000 to 31.03.2004 is payable by the Service Provider.

15.1 I find that the definition of 'Tour Operator' has undergone many changes over a period of time since Service Tax on Tour Operator's Service was introduced with effect from 1-9-1997.

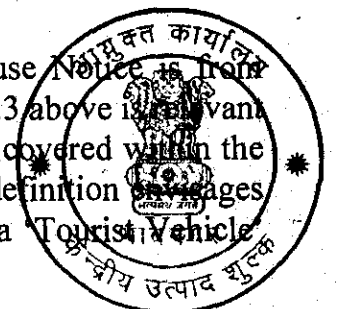
15.2 The word 'Tour Operator' was originally defined as 'Tour Operator' means a person who holds a tourist permit granted under the rules made under the Motor Vehicles Act, 1988 (59 of 1988).

15.3 The said definition of 'Tour Operator' was amended (relevant for the period from 01.04.2000 to 31.03.2004 covered by the SCN) as 'Tour Operator' means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the rules made under the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under. The important change made was that the tourist vehicle must be covered by a permit and the person/ operator need not hold the permit in his name. Thus, to identify the person as 'tour operator', he should have been engaged in the business of operating tours in a 'tourist vehicle' backed by a permit granted under the rules made under the Motor Vehicles Act, 1988. As per Section 65(51) of the Act (as it stood then), tourist vehicle has the meaning assigned to it in Clause 43 of Section 2 of Motor Vehicle Act, 1988. Accordingly, a 'tourist vehicle' means a contract carriage constructed or adapted and equipped or maintained in accordance with such specifications as may be prescribed in this behalf. Therefore, the vehicle should be a contract carriage and should be constructed, equipped and maintained with such specification as may be prescribed in this behalf.

15.4 The definition of 'Tour Operator' was further amended with effect from 10.09.2004. It has been provided that 'Tour Operator' means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sight seeing, 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 Vehicle Act, 1988 or rules made there under. Thus, from 10.09.2004, the scope of the services provided by the 'Tour Operator' was substantially enhanced.

15.5 The statutory definition of 'Tour Operator' has further undergone the changes form 16.05.2008. It has been provided that 'Tour Operator' means any person engaged in the business of planning, scheduling, organising 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 (59 of 1988) or the rules made thereunder.

16. I find that the period covered in this Show Cause Notice is from 01.04.2000 to 31.03.2004. Thus, definition described at para 15.3 above is relevant in the present case to consider whether the Service Provider is covered within the ambit of definition of 'Tour Operator' or otherwise. The said definition envisages that the persons engaged in the business of operating tours in a 'Tourist Vehicle' are covered as 'Tour Operator' to attract levy of Service Tax.



17.1 The Service Provider mainly pleaded that the services provided by them do not fall within the ambit of the term 'Tour Operator' in as much as the vehicles owned by them are registered as Contract Carriage Vehicles under the Motor Vehicles Act, 1988 but are not covered under the definition of 'Tourist Vehicle' within the meaning of Section 2(43) of the Motor Vehicles Act, 1988 read with Rule 128 of the Central Motor Vehicle Rules, 1989 and certificates issued by the Registering Authority also prove this fact. They are engaged in the business of transportation of passengers from one place to another on collection of separate fares from each passenger which is not covered in the definition of a Tour Operator. The Tour Operators, other than those engaged in business of operating tours in a tourist vehicle covered by permit granted under the Motor Vehicles Act, 1988 or rules made thereunder in relation to a Tour, are exempted from levy of Service Tax for the period prior to 10.09.2004 vide Notification No. 25/2004-Service Tax dated 10.09.2004.

17.2 The Service Provider has produced the copies of certificates issued by the Regional Transport Authority, Bhavnagar wherein it has been certified as follows :-

"Hereby certificate is given that passenger bus no. _____ is registered as a Contract Carriage Omnibus under Clause 2(7) of the Motor Vehicles Act, 1988 which is not covered as Tourist Vehicle defined under Clause 2 (43) of the Motor Vehicles Act, 1988 read with Rule 82 to 85 and 128 framed under Central Motor Vehicles Act, 1989."

18.1 I find that the very same issue in the case of the Service Provider was decided by the Assistant Commissioner of Central Excise (Service Tax Division), Bhavnagar vide Order-in-Original No. 70/2003-04 dated 26.09.2003 holding that the services being rendered by the Service Provider fall within the meaning of 'Tour Operator' service as defined in Section 65(115) of the Finance Act, 1994. Being aggrieved, the Service Provider filed appeal before the Commissioner (Appeals), Central Excise, Rajkot against the said Order-in-Original. The Commissioner (Appeals), Rajkot vide Order-in-Appeal No. 134/2006/43(BVR)/Commr(A)/DK/Raj dated 28.02.2006 allowed the appeal filed by the Service Provider holding the view that the Regional Transport Authority, Bhavnagar has certified that the vehicles operated by the Service Provider were not registered as Tourist Vehicles under Section 2(43) of the Motor Vehicles Act, 1988 read with Rule 128 of Central Motor Vehicles Rules, 1989, hence the Service Provider is not a 'Tour Operator'.

18.2 Being aggrieved by the said Order-in-Appeal, the department filed appeal before the Hon'ble CESTAT which has been decided vide Order No. A/328-329/WZB/AHD/2011 dated 18.02.2011. In the said Order, Hon'ble CESTAT has held as follows :-

"4. It is seen that during the course of proceedings, the respondents also produced copies of the certificates issued by the Regional Transport Office in respect of the vehicles being used by them certifying that the same are not tourist vehicles, since the same do not comply with the specifications mentioned under Rule 128. The said certificate issued by the registered authority stands reproduced by Commissioner (Appeals) in his signed order and is being reproduced below for ready reference :-



"Hereby certificate that passenger bus no. _____ is registered as a Contract Carriage under Clause 2(7) of the Motor Vehicles Act, 1988 which is not covered as Tourist Vehicle defined under Clause 2 (43) of the Motor Vehicles Act, 1988 read with Rule 82 to 85 and 128 framed under Central Motor Vehicles Act, 1989."

5. *The appellate authority has held that in as much as the vehicles used by the respondents were not tourist vehicles, they cannot be held to be covered within the ambit of the term Tour Operators, as defined in Section 65(115) of the Finance Act, 1994, prior to 10.09.2004, when the ambit was expanded and made plenary to include "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 Motor Vehicles Act, 1988 or the Rules made there under. Accordingly, by taking note of certificate issued by the Regional Transport Office and the law declared by the Hon'ble Madras High Court in the above referred case of Secretary, Federation of Bus Operators Association of Tamilnadu, Chennai, he concluded that the certificate being provided by the respondents were not covered by the Tour Operator services. The said order of Commissioner (Appeals) is impugned before us.*

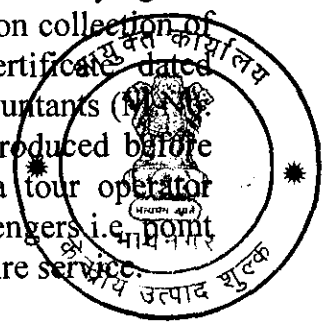
6. *On going through the grounds of appeal, we find that the gist of the same is that the vehicles being used by the respondents were covered by a permit given by the transport authorities and as such, they have to be treated as Tour Operators. However, we find that the certificate given by the Regional Transport Office, as produced above, who is the proper authority to give decision on the said dispute, is clear that the vehicle being used by the respondents cannot be held to be tourist vehicles. The appellate authority has rightly relied upon the same. The Revenue has nowhere disputed the applicability of the Hon'ble Madras High Court judgment. As such, we find no reason to interfere in the order of the Commissioner (Appeals). Revenue's appeal is accordingly, rejected."*

18.3 The aforesaid order of the Hon'ble CESTAT has been accepted by the department as communicated vide letter F.No. V/2-11/Misc/RRA/2010 dated 02.06.2011 of the Deputy Commissioner, Central Excise (RRA), Bhavnagar.

18.4 In view of the above, I hold that as the vehicles used by the Service Provider were not tourist vehicles, they were not covered within the ambit of the term 'Tour Operator' as defined in the Act, prior to 10.09.2004. Therefore, the Service Provider is not liable to pay Service Tax under the category of 'Tour Operator Service' during the period covered by the SCN.

19.1 I also find that the taxable services referred to in section 65(105)(n) of the Act, provided or to be provided to any person, by a tour operator having a contract carriage permit for inter-state or intrastate transportation of passengers, excluding tourism, conducted tours, charter or hire service, have been exempted vide Notification No. 20/2009-S.T. dated 07.07.2009. The said Notification has been given retrospective effect from 01.04.2000 vide Section 75 of the Finance Act, 2011.

19.2 The Service Provider has submitted that they are carrying on business of transportation of passengers from one place to another on collection of separate fares from each passenger. They have submitted certificate dated 15.12.2011 issued by Shri Piyush V. Doshi & Co., Chartered Accountants (M.No. 102717) certifying on the basis of information and documents produced before them for verification that M/s. Gujarat Travels, Bhavnagar is a tour operator having the contract carriage permit for intra state transport of passengers i.e. point to point operation, excluding tourism, conducted tours, charter or hire service.



19.3 As the service provider is having Contract Carriage permit in respect of its vehicles, as certified by the Regional Transport Authority, Bhavnagar and is engaged in inter-state or intrastate transportation of passengers, the same is eligible for exemption as provided under Notification No. 20/2009-S.T. dated 07.07.2009 which has been given effect from 01.04.2000 vide Section 75 of the Finance Act, 2011.

20. In view of the foregoing, I hold that the Service Provider do not fall within the ambit of 'Tour Operator' and Service Tax under the category of 'Tour Operator Service' is not leviable on the value of ₹ 11,15,30,017/- received towards services provided by them during the period from 01.04.2000 to 31.03.2004. As the Service Tax is not leviable, the question of recovery of interest under Section 75 of the Act and imposition of penalty under Section 76, 77 and 77 of the Act does not arise.

23. I, therefore, pass the following order.

ORDER

I drop the proceedings initiated against M/s. Gujarat Travels Agency, Bhavnagar vide Show Cause Notice No. BVN/STAX/DIV/I/013/2004-05/Inv. dated 23.03.2005 issued by the Assistant Commissioner of Central Excise (Service Tax Division), Bhavnagar.

NR 15/12/2011
(N. K. BHUJABAL)
COMMISSIONER

BY REGD. POST A.D.

F.No.V/15-119/STC(Adj.)/TOU/2004-05

Date : 15/12/2011.

To,
M/s. Gujarat Travels Agency,
Near Rajshree Cinema,
Sir Pattani Road,
Bhavnagar.

Copy submitted to :-

- (1) The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
- (2) The Assistant Commissioner, Service Tax Division, Bhavnagar.
- (3) The Superintendent, Service Tax Range, AR-Bhavnagar.
- ✓ (4) Guard file.

