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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, "SIDDDHI 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/15-116/ STC(Adj)/TOU/2004-05

F. No.

आदेश की तारीख : 06/01/2012.

Date of Order :

जारी करने की तारीख : 06/01/2012.

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 : 1/BVR/Commissioner/2012

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 :

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय 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 प्राप्त 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 होना चाहिए। स्थान पर न्यायाधिकरण की न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्रा बैंक के सहायक रजिस्ट्रार के नाम से निर्धारित फीस रेखांकित बैंक ड्राफ्ट के रुप में भेजनी 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. व्यौरापूर्ण करने हेतु सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 की ओर ध्यान आकर्षित किया जाता है।

To,
M/s. Rajdhani Travels,
53, Madhav Darshan,
Waghawadi road,
Bhavnagar – 364 001.

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice F. No. BVN/STAX/DIV/II/012/2004-05/Inv. dated 23.03.2005.



BRIEF FACTS OF THE CASE :-

M/s. Rajdhani Travels, 53, Madhav Darshan, Waghawadi Road, Bhavnagar (hereinafter referred to as "the Service Provider") are providing service of "Tour Operator Service" which is 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 viz.

- (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 provisions of the Act, however, they did not follow the directives.

4. The Service Provider did not take registration and discharge their Service Tax liability as Tour Operator since 01.04.2000. Accordingly, it was gathered by the department that the said Service Provider had provided 'Tour Operator Service' of taxable value of ₹ 12,62,99,995/- during the period from 01.04.2000 to 31.03.2004.

5. A Show Cause Notice No. BVN/STAX/DIV/I/012/2004-05/Inv. dated 23.03.2005 was issued by the Assistant Commissioner, Central Excise (Service Tax Division), Bhavnagar asking 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 ₹ 12,62,99,995/- 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 along with 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 the above amount of 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.

6. The amount of Service Tax liable to be recovered on the taxable value of ₹ 12,62,99,995/- have been quantified and accordingly Service Tax of ₹ 72,34,813/- 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	2,16,82,583/-	5%	10,84,129/-
2	2001-02	2,45,33,682/-	5%	12,26,684/-
3	2002-03	3,24,62,177/-	5%	16,23,109/-
4	2003-04			
(a)	01.04.2003 to 12.05.2003 (42 days)	54,79,740/-*	5%	2,73,987/-
(b)	13.05.2003 to 04.02.2004 (268 days)	3,49,65,960/-*	8%	27,97,277/-
(c)	05.02.2004 to 31.03.2004 (55 days)	28,70,340/-* (40% of 71,75,850/-)	8%	2,29,627/-
TOTAL SERVICE TAX PAYABLE / RECOVERABLE				₹ 72,34,813/-

WRITTEN SUBMISSION:-

7.1 The Service Provider submitted written reply vide letter dated 05.04.2005 wherein it was inter-alia stated as under :-

7.2 It was submitted that they are not a "Tour Operator". As per the original definition, the 'Tour Operator' means a person who holds a 'tourist permit' granted under the rules made under the Motor Vehicles Act, 1988. The said definition was amended w.e.f. 01.04.2000 and remained in force upto 10.09.2004 according to which the '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. Thus, the change in the definition of tour operator is dispensing the condition of holding 'tourist permit' by the person to recognize as 'tour operator'. However, to identify a person as a 'tour operator', the vehicle concerned has to be a 'tourist vehicle' backed by a permit granted under the rules made under the Motor Vehicles Act, 1988 or the Rules made there under.

7.3 The provision of Section 65(114) of the Finance Act defines 'Tourist Vehicle' as the meaning assigned to it in clause 43 of Section 2 of Motor Vehicles Act, 1988. Thus, for identification of a vehicle as a 'tourist vehicle', the Finance Act has resorted to the Motor Vehicles Act, 1988 and according to provisions of Section 2(43) of the Motor Vehicles Act, 1988, a '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. Thus, the vehicle should be a contract carriage and further it has to be constructed/ equipped/ maintained with such specification as may be prescribed in this behalf. The specifications for a 'tourist vehicles' have been prescribed under Rule 128 of Central Motor Vehicles Rules, 1989. Thus, if a vehicle though is a contract carriage, if not constructed as per specification mentioned under Rule 128 of the Central Motor Vehicles Rules, 1989, the subject vehicle can not be classified as a 'tourist vehicle'. It is quite clear that a 'tourist vehicle' should always be a contract carriage but vice-versa is not necessary.



7.4 It was further submitted that the information about the gross value of collection made during the period 01.04.2000 to 31.03.2004 have been given vide letter dated 02.03.2005 and 22.03.2005. It was categorically mentioned therein that they were getting only commission for the administration from the Bus Owner and the Vehicles running under the banner of Rajdhani Travels were Omni Bus & Contract Carriage only and the same were not 'tourist vehicles'. They shown their readiness to produce the specific certificates issued by the competent authority under Motor Vehicles Act, 1988 certifying that the vehicles running under their banner were not 'tourist vehicles' as defined under the rules specified under the provisions of Motor Vehicles Act, 1988. They further added that the specific description of tourist vehicle has been given under Rule 128 of the Central Motor Vehicles Rules, 1989 and confirmed that the vehicles under their banner were not matching to the said description, hence, the subject vehicles were not 'tourist vehicles'. Since the vehicles running under their banner were not tourist vehicles, they were not a 'tour operator' as defined under the Finance Act w.e.f. 01.04.2000.

7.5 It was also submitted that they were surprised to the observation that they had suppressed the facts with intent to evade Service Tax. The figures of ₹ 12,62,99,995/- as mentioned in Show Cause Notice as taxable value of Service Tax had been given by them only vide letters dated 02.03.2005 & 22.03.2005. They stated that there was no question of suppressing facts as the details of collection had been given on being asked specifically for the same. They submitted that with regard to letter asking to register under the category of 'tour operator', it was categorically answered that they were not a 'tour operator' and hence the question of registration and consequential liability of payment of Service Tax and interest thereon did not arise. They further stated that realizing this fact only, they had never collected any amount from any person on account of Service Tax.

7.6 They had drawn the attention towards Para 14, 24 & 36 of the judgment and order of the High Court of Madras in case of Secretary, Federation of Bus Operators' Association of Tamil Nadu Vs. Union of India – 2001 (134) ELT 618 (Madras) whereby Hon'ble Madras High Court had held that the provisions of the Finance Act would not apply to the vehicles which are not the 'tourist vehicles'. They further stated that the Government of India exempted from whole of Service Tax with effect from 10.09.2004 vide Clause (g) of Notification No. 25/2004-ST dated 10.09.2004 in respect of service provided to any person by a tour operator, other than a tour operator engaged in the business of operating tours in a tourist vehicle covered by permit granted under the Motor Vehicles Act, 1988 or rules made there under, in relation to a tour. They contended that Commissioner (Appeals) in the case of M/s. Ghanshyam Travels, Vadodara Vs. Deputy Commissioner of Central Excise & Customs, City Division, Vadodara-II had held that 'tourist vehicle' should match to the description as defined under Rule 128 of Central Motor Vehicles Rules, 1989.

7.7 In view of their submission, the Service Provider requested not to levy and raise any demand of Service Tax and interest and / or penalty under the provisions of the Act and requested to withdraw the notice.

PERSONAL HEARING AND FURTHER WRITTEN SUBMISSION :-

8. Personal Hearing in this case was held on 28.11.2005 wherein Shri A. J. Mandera, Chartered Accountant appeared and handed over written submission dated 28.11.2005 and reiterated the same.



9.1 The Noticee in the written submission dated 28.11.2005 mainly stated as under:-

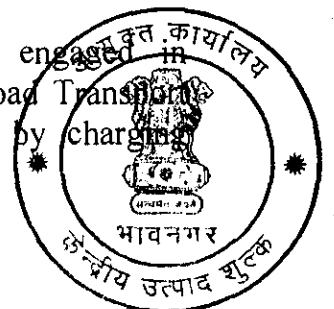
9.2 The Show Cause Notice and the Demand by the Department was based on a presumption that they were a 'Tour Operator' which in fact they were not. As per Section 65 of the Act, as amended w.e.f. 01.04.2000 to 10.09.2004, the 'Tour Operator' means any person engaged in the business of operating tour in a 'tourist vehicle' covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the Rules made there under. Further, as per Section 65(114) of the Finance Act, 'tourist vehicle' has the meaning as assigned to it in Clause 43 of Section 2 of Motor Vehicles Act, 1988. Thus, for identification of a vehicle as a 'tourist vehicle', the Finance Act, 1994 has resorted to the Motor Vehicles Act, 1988. As per the provisions of Section 2(43) of the Motor Vehicles Act, 1988, a '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. Thus, there is a specific requirement of construction / equipments / maintenance of contract carriage vehicle as per specifications and the specifications for a 'tourist vehicle' have been prescribed under the Rules 128 of the Central Motor Vehicle Rules, 1989.

9.3 The Noticee submitted that since vehicles running under their banner were not 'tourist vehicle' as the same were not constructed / maintained / equipped as required under Rule 128 of Central Motor Vehicles Rules, 1989, they were not having applicability of Service Tax and the whole Show Cause Notice is to be treated as bad in law. They enclosed certificates issued from the RTO-Bhavnagar categorically mentioning that the subject vehicles were contract carriage omni bus and cannot be treated as 'tourist vehicle' as per Rules 82 to 85 and 128 of the Central Motor Vehicle Rules, 1989. Since, the RTO is a Govt. Department and competent authority for / under Motor Vehicles Act, 1988; this issue left no scope of ambiguity.

9.4 They further drew the attention to the Trade Notice No. 734/28/2004-Service Tax dated 17.09.2004 issued by the Commissioner, Customs & Central Excise, Nagpur and Letter No. STC/4-32/Evasion/Tour/03/6893 dated 10.12.2004 issued by the Deputy Commissioner, Service Tax, Ahmedabad confirming that the taxability under the Service Tax Act was restricted to tours provided only in 'Tourist Vehicle'. They submitted copy of Order F. No. V-2(STC)28/VDR/2004 dated 29.10.2004 passed by the Commissioner (Appeals) in case of Ghanshyam Travels, Baroda Vs. Deputy Commissioner, C.Ex & Customs, City Division, Vadodara-II wherein it was observed and established that if the vehicle are not 'tourist vehicles' as envisaged under the provisions of the Motor Vehicles Act, 1988 read with Rule 128 of the Motor Vehicles Rules, 1989, then the simple contract carriage vehicles are not covered under the applicability of provisions of the Service Tax.

9.5 They have also submitted copy of Notification No. 25/2004-ST dated 10.09.2004 issued by the Ministry of Finance, Department of Revenue, Government of India which exempted the 'Service provided to any person by a tour operator, other than a tour operator engaged in the business of operating tour in a tourist vehicle covered by a permit granted under the Motor Vehicle Act, 1988 or Rules made there under, in relation to a tour'.

9.6 It was contended by the Noticee that they are engaged in transporting of the passengers in the same manner as the State Road Transport Corporation i.e. carrying passengers from one place to another by charging



13.4 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 Vehicles 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.

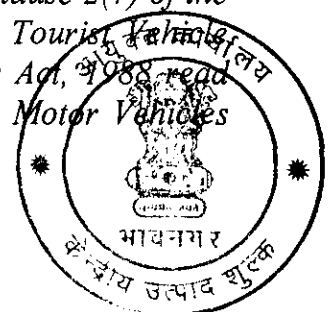
13.5 The statutory definition of 'Tour Operator' has further undergone the changes form 16.05.2008. It has been provided that 'Tour Operator' means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing 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.

14. 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 13.3 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.

15.1 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/ used 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 Vehicles Rules, 1989 and certificates issued by the Registering Authority (Regional Transport Officer) also proves 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.

15.2 The Service Provider has submitted the copies of certificates issued by the Regional Transport Authority, Bhavnagar in respect of vehicle Nos. GJ-4V-7763, GJ-4V-7749, GJ-4V-4502, GJ-4V-1022, GJ-4V-1048, GJ-4V-1049, GJ-4V-1176, GJ-4V-1180, GJ-4V-1191, GJ-4V-1192, GJ-4V-1193, GJ-4V-1194, GJ-4V-4528, GJ-4V-4592, GJ-4V-4593, GJ-4V-4594, GJ-4V-4595 and GJ-4V-7748, wherein it has been certified as follows :-

"Certificate is hereby 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."



15.3 The Service Provider has also submitted the copies of certificates issued by the Regional Transport Authority, Rajkot in respect of vehicle Nos. GJ-3Y-230, GJ-3Y-42, GJ-3Y-229, GJ-3Y-41, GJ-3Y-24 and GJ-3Y-23, wherein it has been certified as follows :-

"Certificate is hereby given that passenger bus no. _____ has been registered as Heavy Passenger Vehicle (H.V.P.) Omnibus from the date of its registration and not covered as Tourist Vehicle defined under Rule 128 of Central Motor Vehicles Rules, 1989 and for the purpose of taxation, tax is being assessed at the rates applicable for luxury buses and accordingly tax is being recovered."

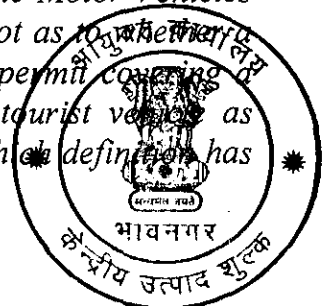
16.1 I find that 'Tour Operator' was defined during relevant period as any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the rules made under the Motor Vehicles Act, 1988 and the rules made there under. Service Provider has submitted that vehicles owned/ used by them are not 'Tourist Vehicle' within the meaning of Section 2(43) of the Motor Vehicles Act, 1982 read with Rule 128 of the Central Motor Vehicles Rules, 1989. Therefore, it is required to be ascertained whether the vehicles used by the Service Provider can be termed as 'Tourist Vehicle'. Hon'ble High Court of Madras in the case of Secretary, Federation of Bus - Operators' Association of Tamilnadu V/s. Union of India [2001 (134) E.L.T. 618 (Mad.)] has discussed various provisions of Finance Act, 1994, Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, 1989 and held which vehicles can be recognised as 'Tourist Vehicles' under the Motor Vehicles Act, 1988 and rules framed there under. Relevant paras of the said judgement reads as follows :-

14. At this juncture, it will be seen that as per Section 2(43) of the Motor Vehicles Act, the Motor Vehicles Rules specifically provide the conditions for a vehicle being recognised as a "tourist vehicle" under Section 2(43). We can conveniently refer to Rule 128 of the Motor Vehicles Rules, which provides the conditions for a tourist vehicle other than motor cabs, maxi-cab, camper's van, house trailer which a tourist vehicle shall conform to. Number of specifications are given in that rule in respect of dimension, structure, door arrangement, ventilation, luggage space, seating arrangement, painting and furnishing, lighting, fitting and accessories, etc. In short, Rule 128 specifies the standard of comforts which are required to be there in a vehicle for being recognised as the "tourist vehicle" under the Central Motor Vehicles Rules. We have, therefore, no hesitation first to hold that the first and foremost condition for a person to be held as a "tour operator" within the meaning of Section 65(52) of the Finance Act is that he must be engaged in the business of operating tours in a "tourist vehicle" in terms of Section 2(43) of the Motor Vehicles Act and in no other type of vehicle and, therefore, necessarily such vehicle must conform to the conditions prescribed under Rule 128 of the Central Motor Vehicles Rules.

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24. However, it must be remembered that in the present case, we are not concerned with the two kind of permits. The question posed before us is whether a vehicle covered under Section 72(2)(xvii) of the Motor Vehicles Act can be viewed as a tourist vehicle. The question is not as to whether a permit under Section 88(8) would ipso facto become a permit covering a contract carriage. It has to be borne in mind that a tourist vehicle as defined under Section 2(43) of the Motor Vehicles Act which definition has



been picked up as it is by the Finance Act, means a contract carriage constructed or adapted and equipped or maintained in accordance with such specifications as may be prescribed more particularly the specifications prescribed under Rule 128 of the Motor Vehicles Rules. Therefore, this ruling will not help the petitioners to suggest that a vehicle covered under Section 72(2)(xvii) merely for that reason or merely because it is having permit under Section 88(8) of the Motor Vehicles Act for its occasional use can never become a tourist vehicle. A plain reading of the provisions of the Motor Vehicles Act says that any such vehicle which answers the description of the tourist vehicle under Rule 128 and which would run under a contract would become a tourist vehicle and once it becomes a tourist vehicle so long as it is being used under any permit under the Motor Vehicles Act, by a person who is engaged in the business of operating the tours then, the requirement of the Finance Act would be complete.

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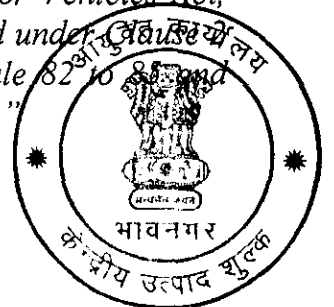
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36. At this stage, all the learned Counsel pointed out that the petitioners' spare buses may not be the "tourist vehicles" within the meaning of Section 2(43) of the Motor Vehicles Act and, therefore, they are not liable. Indeed, if the vehicles owned by the petitioners are not the "tourist vehicles" within the meanings of Section 2(43) of the Motor Vehicles Act read with Rule 128 of the rules framed thereunder then, such petitioner would not be required to be registered under the Finance Act. The learned Senior Counsel for the Department very fairly accepted this position. However, he pointed out that it would be for the petitioners to raise their objections before the concerned authorities under the Finance Act and their objections would be decided upon. Therefore, the petitioners are permitted to raise the objections before the concerned authorities issuing the notices and the authorities will decide as to whether the petitioners' vehicles are the "tourist vehicles" as contemplated under Section 2(43) of the Motor Vehicles Act, which is sine qua non for the application of the Finance Act. Needless to mention that if they are not the "tourist vehicles", the provisions of the Finance Act would not apply and more particularly the provisions of Section 65(51) and the other allied sections like Section 66(3), etc.

16.2 The Hon'ble CESTAT vide Order No. A/328-329/WZB/AHD/2011 dated 18.02.2011 in the case of Commissioner of Central Excise, Bhavnagar V/s. Gujarat Travels [2011 (22) S.T.R. 558 (Tri. – Ahmd.)] 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 impugned 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 (43) of the Motor Vehicles Act, 1988 read with Rule 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."*

16.3 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.

17.1 I find that the ratio of aforesaid judgment of Hon'ble Madras High Court and decision of Hon'ble CESTAT is squarely applicable in the present case. The Service Provider has submitted certificates given by the Regional Transport Officer, Bhavnagar/ Rajkot certifying that vehicles being used by the Service Provider cannot be held to be tourist vehicles.

17.2 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.

18.1 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.

18.2 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 07.12.2011 issued by Shri A. J. Mander & Co., Chartered Accountants



40753) certifying on the basis of verification of books of accounts and other details produced before them that during the Financial Year 2000-01 to 2003-04, M/s. Rajdhani Travels, Bhavnagar has been engaged in the point to point transportation of passengers in the vehicles having a contract carriage permit for inter state or intrastate transportation of passengers and during the said period, M/s. Rajdhani Travels has not provided any services in the nature of tourism, conducted tours, charter or hire services.

18.3 As the Service Provider is having Contract Carriage permit in respect of vehicles used for providing service, as certified by the Regional Transport officer and by the Chartered Accountant 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.

19. 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 ₹ 12,62,99,995/- 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 78 of the Act does not arise.

20. I, therefore, pass the following order:

ORDER

I drop the proceedings initiated against M/s. Rajdhani Travels, Bhavnagar vide Show Cause Notice No. BVN/STAX/DIV/I/012/2004-05/Inv. dated 23.03.2005 issued by the Assistant Commissioner of Central Excise (Service Tax Division), Bhavnagar.


 (N.K. BHUJABAL)
 COMMISSIONER

BY REDG. POST A.D.

F.No. V/15-116/STC(Adj.)/TOU/2004-05

Date : 06/01/2012.

To,
 M/s. Rajdhani Travels,
 53, Madhav Darshan,
 Waghawadi Road,
 Bhavnagar – 364 001.

Copy 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.

