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|  | <p>Govt. of India Office of the Commissioner of Central Excise 'Siddhi Sadan', Plot No.6776/B-1, Narayan Upadhyay Road, Off Waghawadi Road, Bhavnagar</p> |
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By R.P.A.D.

F. No. V/15-27/STC (Adj) TOU/SUMMONS/05-06.

Date of Order: 28/12/2011

Date of Issue: 28/12/2011

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 47 / BVR / Jt.Commr / 2011

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this Order may appeal against this order under Section 85 of Finance Act, 1994 to the Commissioner, Central Excise(Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road. Rajkot-360001 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

The appeal should be filed in form ST-4 in duplicate, as per the provisions of Section 85 of the Finance Act, 1994 read with Rule 8 of the Service Tax Rules, 1994. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2002.

It should be accompanied with the following:

- Copy of appeal in duplicate
- Copies of the order, one of which shall be certified copy **OR** the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

BY R.P.A.D.

To,
Shri Shrinath Travel Agency,
S/1-2, Suryadarshan Complex,
Rubber Factory Circle,
Bhavnagar.

Subject: Show Cause Notice Number No. BVN/STAX/CTY/SUMMONS-TOU/002-03-04 Dated 19.05.2005 issued to M/s. Shrinath Travel Agency, Bhavnagar demanding Service Tax of Rs. 7,46,011/-.

BRIEF FACTS OF THE CASE :-

M/s. Shrinath Travel Agency, S/1-2. Suryadarshan Complex, Rubber Factory Circle, Bhavnagar (hereinafter referred to as "the Service Provider") are providing "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 2001 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 during the period 2000-01 to 2003-04. It was gathered by the department that the said Service Provider had provided 'Tour Operator Service' of taxable value of Rs.1,31,95,800/- during the period 2000-01 to 2003-04.

5. A Show Cause Notice No. BVN/STAX/CITY/SUMMONS-TOU/002-03-04 dated 19.05.2005 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 Rs. 1,31,95,800/- for rendering Tour Operator Service during the period from 2000-01 to 2003-04 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 Rs. 1,31,95,800/- have been quantified and accordingly Service Tax of Rs. 7,46,011/- 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 (Rs.) |
|---------|-----------------------|------------------------|---------------------|---|
| 1 | 2000-01 | NIL | 5% | NIL |
| 2 | 2001-02 | 21,13,040/- | 5% | 1,05,652/- |

| | | | | | |
|-----|--|--|--------------------------------------|----|-----------------------|
| 3 | 2002-03 | | 55,04,770/- | 5% | 2,75,238/- |
| 4 | 2003-04 | | | | |
| (a) | 01.04.2003 to 12.05.2003 (42 days) | | 6,41,850/-* | 5% | 32,092/- |
| (b) | 13.05.2003 to 04.02.2004 (268 days) | | 40,95,620/-* | 8% | 3,27,650/- |
| (c) | 05.02.2004 to 31.03.2004 (55 days) | | 67,241/-* (40% of 8,40,519 /-) | 8% | 5,379/- |
| | TOTAL SERVICE TAX PAYABLE / RECOVERABLE | | | | Rs. 7,46,011/- |

WRITTEN SUBMISSION:-

7.1 The Service Provider submitted written reply vide letter dated 10.06.2005 wherein it was inter-alia stated as under :-

7.2 They are not providing 'Tour Operator Service' but doing business of 'Travel Agent' and book ticket on commission basis. They are registered as 'Travel Agent' with the Service Tax Department vide Registration No. BVN/STAX/CTY/XX/I/TAO/001/04-05 dtd. 25.10.2004 and already paid Service Tax.

7.3 They submitted that when they are not covered under the category of Tour Operator, it is needless to register themselves as Tour Operator. The Akhil Gujarat Pravasi Vahan Sanchalak Mahamandal had also made various representation to Secretary, Ministry of Finance & Central Board of Excise & Customs with regard to many discrepancies in act i.e. 'Tourist Vehicles, Package Tour etc. Therefore, the Ministry of Finance created new category of 'Travel Agent Service' to solve this issue and accordingly they were covered under the category of Travel Agent w.e.f. 10.09.2004.

7.4 They stated that they had neither breached any provisions of Service Tax Act nor have suppressed the fact in this behalf. When they are not covered under such category, how they are liable for Service Tax. They had never collected any amount as service tax from their customer in past hence liabilities to pay service tax for previous years does not arise. No coercive action should be taken against them because their intense was not malified and they are registered in the category of 'Travel Agent' and paying Service Tax from the first day i.e. 10.09.2004.

7.5 It was submitted that Ministry of Finance has clarified and put their business in Travel Agent, hence they are not liable to pay Service Tax in the category of Tour Operator. They requested to grant personal hearing before finally deciding the subject Show Cause Notice.

PERSONAL HEARING :-

8. The Personal Hearing in the matter was granted to the Service Provider on 21.10.2011, 18.11.2011, 14/15.12.2011 and 26/27.12.2011. No body appeared to avail the same, however, the Service Provider vide his letter dated 26.12.2011 stated that they had registered themselves as 'Travel Agent' on 25.10.2004 and Service Tax returns have been duly filed in this context. Moreover, they submitted that during their term of operations, they did not own or

operate any bus. The buses were not tourist vehicles. They were merely working in a position of 'Booking Agent' for buses being operated for point service and not for packaged tour, conducted tour, tourism, charter or hire service. They further stated that this will clarify their situation in this matter and requested to withdraw the notice served to them.

DISCUSSION & FINDINGS :-

9. I have carefully gone through the show cause notice, record of the case and written submissions made by the Service Provider.

10. It is observed from the record of the case that sufficient opportunities of Personal Hearing were imparted to the Service Provider, however, they failed to avail it. I, therefore proceed to decide the SCN on the basis of written submissions dated 10.06.2005 & 26.12.2011 of the Service Provider.

11. 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(52)/ 65(115) of the Finance Act, 1994 during the relevant period and if so whether Service Tax of Rs. 7,46,011/- calculated at appropriate rate on taxable value of Rs. 1,31,95,800/- received towards services rendered during the period from 2000-01 to 2003-04 is payable by the Service Provider.

12. The said definition of 'Tour Operator' relevant for the period from 2000-01 to 2003-04 covered by the SCN is '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. Thus, the main ingredient to be a 'Tour Operator' is that the vehicle must be a 'tourist vehicle'. 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 Vehicles 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.

13. 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 have acted as 'Booking Agent' during the term of their operation and had not owned any vehicles. The buses were not tourist vehicles. They also pleaded that they were engaged in Booking of buses running for point to point transportation and not for Package Tour, Conducted Tour, Tourism, Charter or Hire. They also stated that they had acted merely as 'Booking Agent' and not as 'Tour Operator'.

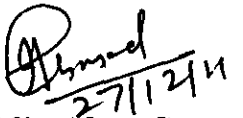
14. I find that the it is the submission of the Service Provier that buses used for their operation were not 'tourist vehicles' and they merely engaged in Booking of buses running for point to point transportation only. Since, the vehicles were not 'tourist vehicle', they are not covered by the definition of 'Tour Operator'. It was also submitted that the buses were running for point to point transportation and 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.

15. In view of the foregoing submission, 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 Rs. 1,31,95,600/- received towards services provided by them during the period from 2000-01 to 2003-04. 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.

16. I, therefore, pass the following order.

ORDER

I drop the proceedings initiated against M/s. Shrinath Travel Agency, Bhavnagar vide Show Cause Notice No. BVN/STAX/CTY/SUMMONS-TOU/002-03-04 dated 19.05.2005 issued by the Assistant Commissioner of Central Excise (Service Tax Division), Bhavnagar.


(Imamuddin Ahmed)
Joint Commissioner

BY REDG. POST A.D.

F.No. V/15-27/STC(Adj.)TOU/SUMMONS/200-05

Date : 28/12/2011.

To,
M/s. Shrinath Travel Agency,
S/1-2, Suryadarshan Complex,
Rubber Factory Circle,
Bhavnagar.

Copy to :-

1. The Commissioner, Central Excise, Bhavnagar (RRA Section).
2. The Assistant Commissioner, Service Tax Division, Bhavnagar.
3. The Superintendent, Service Tax Range, AR-Bhavnagar.
- ✓ 4. Guard File.