

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 11907 of 2013- DB

(Arising out of OIA-PJ/14/VDR-I/2013-14 dated 10/04/2013 passed by Commissioner of Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Green Logistics Corporation

Shiyabaug, Kumbhaarvada Naka,
Pologround Road,
Vadodara, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-i

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat -390007

.....Respondent

APPEARANCE:

Shri, Mrugesh Pandya, Advocate for the Appellant

Shri, Ajay Kumar Smota, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. A/11698/2023

DATE OF HEARING: 30.05.2023

DATE OF DECISION: 17.08.2023

RAMESH NAIR

The issue involved in the present case is that, whether the appellant is liable to pay Service Tax on the hiring of Buses to Maharashtra State Road Transport Corporation (MSRTC) under the head of 'Rent a Cab operator Service'.

2. Shri, Mrugesh Pandya, Learned Counsel appearing on behalf of the appellant submits that the appellant were paying service tax under 'rent a cab service' and 'Tour operator service' regularly. They were under bonafide belief that, since hiring the vehicle is different from rent a cab service the same is not liable for service tax.

2.1 He submits that at the most the hiring of the vehicle to Maharashtra State Road Transport Corporation (MSRTC) is falling under 'Supply of

Tangible Goods Service’. However, since the demand was not made under that head service tax demand is not sustainable.

2.2 He further submits that the issue involved in the present case was not free from doubt that whether the hiring of buses should fall under the taxable service of rent a cab service, only after various judgments it was held with the said service is liable to tax, in such a situation the appellant’s bonafide belief cannot be doubted. Hence the demand for extended period cannot be invoked; he placed reliance on the following judgments:

- Commissioner of Service Tax Vs. Vijay Travels – 2014 (36) S.T.R. 513 (Guj.)
- Pearl Travels Versus Commissioner Of C. EX. & S.T., Daman – 2020 (37) G.S.T.L 242 (Tri.Ahmedabad)
- Sanghavi Travels Vs. C.C.E. & S.T. – Vadodara- II – 2018 (8) TMI 558-CESTAT Ahmedabad
- Chaturvedi Travels & Tours Vs. C.C.E. & S.T. Indore – 2017 (6) TMI 720-CESTAT New Delhi

2.3 He submits that entire demand which is for the period May 2008 to March 2010 is time barred, as the show cause notice was issued on 21.09.2011.

2.4 He further submits that in the facts of the present case since no any malafide is involved the penalty under Sections 76, 77 & 78 of the Finance Act 1994. Deserve to be set aside invoking Section 80 of the Finance Act 1994. On this submission he placed reliance on the following judgments:

- EMI Transmission Ltd Vs. CCE, Nashik 2019 (20) GSTL 259 (Tri-Mumbai)
- Adarsh Agency VS. CCE, Nagpur 2017 (6) GSTL 157 (Tri-Mumbai)
- ETA Engineering Vs. CCE, Chennai 2004 (174) ELT 19 (Tri- Larger bench)

3. Shri, Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. We have carefully considered the submissions made by both the sides and perused records.

4. After hearing both the sides and going through facts of the case, we are of the view that this appeal can be disposed of only on the limitation. We find that there is no dispute that the issue involved interpretation of law regarding taxability of the service of hiring of buses. On this issue various cases have been decided and though finally it was held that the hiring of the buses also falls under 'rent a cab service' but considering the bonafide of the assessee the demand is set aside on the ground of time barred. This has been considered in the case of Vijay Travels (Supra) wherein the Hon'ble Gujarat High Court while dealing with the demand for the longer period upheld the order of the Tribunal to the extent the demand was set aside on time bar. The relevant order is reproduced below:

22. *This brings us to the question Nos. V and VI which concern invoking of extended period of five years for levying service tax in case of the respondent.*

23. *Commissioner noted that the registration was effected by the petitioner in the year 2004 and one of the terms of its agreement with GSEB clearly indicates that liability to pay service tax shall be of the respondent. It also further held that necessary details as would be necessary for assessing the quantum of service tax were not furnished by the respondent and petitioner agreed not to have filed service tax return in his statement recorded and hence, this should be presumed as mala fide intention on the part of the respondent. It levied the penalty giving these reasonings.*

24. *Tribunal, however, treated this issue academic in nature and rightly so as it held in favour of the assessee on earlier adjudged issues (Nos. I and II). It, of course, held that no intentional suppression or mala fide could be read into the action of the respondent assessee as this service has been recently brought under the tax net and much ambiguity was prevailing in respect of the same.*

25. *We are in complete agreement with the Tribunal that invocation of extended period required deliberate act of suppression or mala fide or to the Revenue, the same is not available in the instant case.*

25.1 *This service was levied with effect from 16th July, 1997, however, vide Notification No. 3/99, it was exempted from tax upto 31st March, 2000. Section 66(3) of the Finance Act which is the charging Section, brought the same under the tax net.*

25.2 *Initially, registration and owning of minimum particular numbers of vehicles was a must and later on, amendments in the law were brought.*

25.3 *Merely because the petitioner got himself registered on 23-3-2004 and by way of abundant caution incorporated and accepted its liability in one of the terms of agreement, as and when arises, that ipso facto cannot be adjudged as his deliberate act of non-payment of tax alleging suppression and mala fide intention. It is a matter of record that the petitioner has been operating in the field from the year 1997. Every year by virtue of tender published by GSEB on the basis of yearly contract, it provides vehicles to the Board for the purpose of examining squad, for transfer of papers and for other requirements during the SSC and HSC examinations. Considering a serious legal debate as to who can be said to be renting of a cab, petitioner if has not paid service tax on such services, the Tribunal correctly appreciated that such, by no stretch of imagination, be held as mis-statement or deliberate act of suppression or mala fide intent.*

26. *Both the notices being 31-8-2006 and 19-10-2007 since are given beyond the stipulated period invoking large period of limitation, we answer these issues in favour of the assessee holding that the Tribunal committed no error in deciding these issues.*

27. *In light of the totality of facts and circumstances of the case and the law on the subject, the aforementioned substantial questions of law raised in both these Tax Appeals are answered as follow :*

(a) *Question Nos. I and II are answered in negation and hence, in favour of the revenue.*

(b) *Question Nos. III and IV do not require any separate answers being the extension of the arguments of Question Nos. I and II.*

(c) *Question Nos. V and VI are answered in negation and therefore, in favour of the assessee.*

28. *Both these Tax Appeals are disposed of in the above term."*

4.1 This Tribunal also on the same issue in the case of Pearl Travels (supra) dealing with issue of limitation passed the following order:

9. *"Therefore, we have no doubt in our mind that the services provided by the appellant to M/s. Welspun who have used this service undisputedly in relation to their business or commerce and will fall under support services of business or commerce. Therefore, the demand under business support service was rightly invoked by the revenue. As regard the limitation, since there was no ambiguity as regard taxability of appellant service under the head of Business Support Service, non- payment of Service Tax without informing to the department is clearly under suppression of fact on the part of the appellant, therefore, the demand for extended period is rightly invoked by the Adjudicating Authority and the First Appellate Authority.*

10. *As per our above discussion the demand in respect of rent a cab operator service is sustainable only to the extent it relates to the normal period and demand for the extended period is set aside. As regard demand of Business Support Service the same is sustainable, as regard penalty imposed under Section 76 and 78, we are of the view that simultaneous penalty under Section 76 and 78 cannot be imposed as held by Hon'ble Gujarat High Court in the case of Rawal Trading Company- 2016 (42) S.T.R. 210 (Guj.), therefore, the penalty imposed under Section 76 is set aside. Other penalties and interests to the extent demand was sustained, is imposable."*

5. In view of the above judgments even though the demand on merit was sustainable, but demand for the extended period was set aside. Considering

this legal position is the present case since entire demand is beyond normal period the same is not sustainable. Consequently the penalties are also not sustainable.

Accordingly the impugned order is set aside and appeal is allowed.

(Pronounced in the open court on 17.08.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha