

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 30 of 2011

[Arising out of OIA-425/2010/STC/MM/COMMR-A-/AHD dated 16/11/2010 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD]

Gunjan Travels

1, Mudra Apartment, 9/26, Chaitanya Nagar,
Near Stadium Petrol Pump, St. Xaviers High School Road,
Ahmedabad,
Gujarat

.....Appellant

VERSUS

C.S.T.-Service Tax - Ahmedabad

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad,
Gujarat-380015

.....Respondent

APPEARANCE:

None for the Appellant

Shri. R. P Parekh, Superintendent (Authorized Representative) for the
Respondent

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

FINAL ORDER NO.A/ 10818 /2022

DATE OF HEARING: 18.07.2022

DATE OF DECISION: 26.07.2022

RAMESH NAIR

The facts of the case are that the appellant is engaged in providing taxable services under the category of "Rent a Cab Operator" services as defined under Section 65(105) of the Finance Act, 1994. On the basis of CERA audit, it was observed that the appellant had submitted the annual Balance Sheet and corresponding records to the Income Tax Department, Ahmedabad

every year. The CERA audit party had audited the said Balance Sheet filed with Income Tax Department and S.T.3 returns filed with Service Tax Department for the year 2002-03 and 2003-04. On verification of the said Balance Sheet, it was noticed that the appellant had short paid Service Tax amount of Rs. 1,56,908/-. Accordingly, a show cause notice was issued to the appellant on 16.10.2007, which was adjudicated vide order in original. The adjudicating authority confirmed the demand of Service Tax amount of Rs. 1,56,902/- under Section 73(1) of the Finance Act, 1994. The appellant had already paid Service Tax along with the interest amount of Rs. 49,688/-, ordered recovery of interest thereon under Section 75 of the Act and imposed penalties under Section 76 and 78 of the Finance Act. Being aggrieved by the order in original, the appellant preferred the appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) by the impugned order upheld the order in original and set aside the appeal mainly on the ground that all the claim made by the appellant that the services provided by them are not taxable according to the nature of the service is not supported by any documentary evidence. Accordingly, the Learned Commissioner (Appeals) in absence of any documentary evidence to justify the claim of the assessee, rejected the appeal. Being aggrieved by the impugned order the appellant filed the present appeal.

2. When the matter was called out, None appeared on behalf of the appellant. It is observed that this matter has come up for hearing on many dates i.e. 18.07.2022, 11.05.2022, 02.02.2022, 13.01.2022, 16.12.2021, 26.11.2021, 22.10.2021, 16.01.2020, 16.12.2019, 20.11.2019, 28.10.2019, 27.09.2019, 28.08.2019, 01.05.2019, 29.03.2019, despite giving so many opportunities the appellant have not come forward to present their case before this Tribunal. Therefore, the appeal is taken for disposal on the basis of records.

3. We have heard Shri R P Parekh Learned Superintendent (Authorized Representative), who reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by Learned AR and perused the records. We find that the appellant from the adjudication stage till this appellate stage claimed that the demand is not sustainable on the ground that vehicle which was used for "Rent a Cab Operator" is of 12 seater. Therefore, the same is not covered under the "Rent a Cab Operator" service. They also submitted that in some cases they have provided their service as sub- contractor and for that reason also the Service Tax on the service of sub-contractor is not taxable. It is also submission of the appellant that they have provided services to UNICEF. The claim of the appellant legally appears to be correct. However, the appellant has not submitted any documentary evidence in support of their claim either before the lower authority or before this Tribunal. We also note that even department also not adduced any evidence in support of the show cause notice for demand of service tax about the nature of service. In this position, we are of the view that without having documents on record, the claim of the appellant cannot be established regarding non taxability of the service. In this circumstances and in the interest of natural justice, we are of the view that one opportunity can be given to the appellant to present their case before the adjudicating authority and to submit all the documents whereby the claim of the appellant can be established.

5. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for re-consideration of the entire case afresh. However, it is observed that the adjudicating authority has imposed penalty under Section 76 and 78 simultaneously. As of now it is a settled law that both the penalties simultaneously cannot be imposed as held in the following cases:

1. Raval Trading Company Vs. Commissioner of Service Tax- 2016 (42) S.T.R. 210 (Guj.)
2. Commissioner Vs. First Flight Courier Ltd.- 2011 (22) S.T.R. 622 (P & H)

6. Accordingly, the penalty imposed under Section 76 is set aside. With the above observation the appeal is disposed of by way of remand to the adjudicating authority in the above terms.

(Pronounced in the open court on 26.07.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Palak