

**FCUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

SERVICE TAX APPEAL NO. 50687 OF 2017

[Arising out of Order-in-Original No. ALW-EXCUS-O-I-O-COM-86/16-17 dated 31.01.2017 passed by the Commissioner of Central Excise and Service Tax, Alwar (Rajasthan)]

**RAJASTHAN STATE ROAD TRANSPORT
CORPORATION**

Chomu House, Prithviraj Marg, C Scheme,
Jaipur, Rajasthan.

Appellant

Vs.

**COMMISSIONER OF CENTRAL EXCISE AND
SERVICE TAX, ALWAR**

Respondent

Appearance:

Present for the Appellant :S/Shri Sameer Sood and Jitin Mandovaria, Advocates

Present for the Respondent: Shri Rajeev Kapoor, Authorised Representative

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)

HON'BLE Ms. HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)

DATE OF HEARING : 05/02/2024

DATE OF DECISION : 19/03 2024

FINAL ORDERS NO. 55361 /2024

DR. RACHNA GUPTA

The appellant in the present appeal is registered under taxable category of Tour operator services/ Business Auxiliary Service / Renting/ Sale of space or time for advertisement services / Renting of immovable property services / Business Support Service etc. The department while audit of the appellants record observed that during the period from July 2012 to March, 2015, the appellants were receiving buses and taxies on hire from various parties and thereby were availing the rent-a-cab service. They were also receiving services provided by individual advocates or firm of advocates. For the period from 1.7.2012 the appellant is observed

to be liable under reverse charge mechanism in respect of both the said services on 100% /40%, as the case may be, by the billed value in terms of Notification No. 30/12-ST dated 20.6.2012. Department alleged that service tax for the period from 01.07.2012 to 31.03.2015 with respect to the both the above services was not paid by the appellant. Resultantly, vide Show Cause Notice No. 496-498 dated 08.02.2016, the Service Tax amounting to Rs.5,79,80,778/- (Rs.5,65,88,341/- as payment of hired buses, Rs.3,30,254/- on payment of hired taxi and Rs.10,62,184/- on legal services, was proposed to be recovered from the appellant along with proportionate interest and appropriate penalties. The proposal was confirmed vide Order-in-Original No. 86/16-17 dated 31.7.2017.

2. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri Sameer Sood and Shri Jitin Mandovaria, learned Counsels appearing for the appellant and Shri Rajeev Kapoor, learned Authorised Representative for the department.

4. Learned Counsel for the appellant foremost has objected the Show Cause Notice being barred by time as the demand of period for 2012-13 and 2013-14 has been proposed vide the show cause notice of February, 2016. It is impressed upon that the limitation cannot be invoked based on the audit observations. Decision of **M/s. G D Goenka Pvt. Ltd. vs. Commissioner of Central Goods and Service Tax, Delhi South** in Service Tax Appeal No. **51787/2022** has been relied upon. It is further submitted that

the statutory bodies like the appellant cannot be fastened with the allegations having intent to evade duty. Decision in the case of **M/s. Chandigarh Transport Corporation vs Commissioner of Central Excise, Chandigarh I [2023 (7) TMI 363 –CESTAT-Chandigarh]** has been relied upon.

5. With respect to the demand pertaining to normal period, learned counsel while impressing upon the merits of the case has mentioned that the appellant has been established by Government of Rajasthan on 1.10.1964 under the **Road Transport Act 1950**. It has 5000 buses in its fleet and 56 depots across the State and 3 depots outside the State. Hence, the appellant is a State Transport Undertaking. As per the definition notified under clause 42 (zg) of Section 2 of Motor Vehicle Act, 1988, appellant is a State Transport Undertaking. As per Notification No. 25/2012 dated 20.6.2012, there arises no tax liability on such undertaking. Decision of **Gujarat State Road Transport Corporation [2020 (34)GSTL J 100 (SC)]** has been relied upon. Learned Counsel further mentioned that the service of hiring the buses by the appellant, it not being business entity are exempted from service tax as per section 22 of Notification 32 of 2016. Decision in the case of **Maulana Azad National Institute of Technology vs CCE Bhopal [2019 (27) GSTL 383 (Tri-Del)]** has been relied upon. With these submissions, it is prayed that impugned order be set aside and appeal is prayed to be allowed.

6. Rebutting the submissions, learned Authorised Representative has mentioned that non-payment or short payment of tax liability came to the department's notice only after the audit of the appellants record. The non-mentioning of the liability in their returns is definitely an act of suppression, hence extended period has been rightly invoked. On merits, it is submitted that the appellant irrespective is constituted under the mandate of Statute but they are the profit oriented authority. For this simple reason, the decision of **Maulana Azad National Institute of Technology** (supra) is not applicable to the them. The appellant's are liable to pay service tax under reverse charge mechanism for the impugned demand. Impressing upon, no infirmity in the order under challenge, the appeal is prayed to be dismissed.

7. Having heard the rival submissions and on perusing the decision relied upon by the appellant, we observe that the issue is no more res integra. In **Bangalore Metropolitan Transport Corporation (BMTc) [2015 (38) STR 976 (Tri-Bangalore)]** it has been held at the business undertaken by BMTc is to provide bus facility /transport facility to the citizens of Bangalore city and main activity is that running the buses in the city for convenience of the citizens and thus it cannot be called as a rent-a-cab service operation. The definition of cab under section 65 (20) of Finance Act, 1994 of maxicab under section 65 (70) of Finance Act read with Section 2 (22) of Motor Vehicle Act and of rent-a cab scheme operator defined under section 65 (91) along with the meaning of taxable service in relation to renting of cabs given under section 65

(105)(a) of the Finance Act, 1944 have been examined by the Tribunal in BMTC case. The Tribunal has held that definition itself excludes State Transport Undertakings (Bangalore's **BMTC** in said case) from the category of service providers. The said decision of the Tribunal has been confirmed by Hon'ble Supreme Court in the case reported as [**2015 (38) STR J 429 (SC)**]. On the same basis is a another decision of **Gujarat State Road Transport Corporation vs Commissioner of Central Excise and Service Tax, Ahmadabad [2020 (34) GSTL 526 (Tri-Ahmd)]**. Same has also been upheld by Supreme Court in [**2020 (34) GSTL J 100 (SC)**].

8. Though in the present case the appellant is alleged to be the recipient of rent-a- cab service and is held liable under reverse charge mechanism (RCM) we observe that Notification No. 25/2012 dated 20.6.2012 exempts State Transport Undertaking from any tax liability. The decision of **Maulana Azad** (supra) is well applicable to present case. Accordingly, we hold that appellant is not liable to service tax for receiving buses and taxis on hire. Since we do not find any cogent rebuttal to the fact that the appellant is the creature of statute and is discharging a public function without any profit motive and in view of Notification No. 25/2012, there arises no tax liability while rendering any service to Government authorities, we hold that the appellant cannot be made liable to tax not even under RCM for receiving legal consultancy services.

9. Coming to the plea of invocation of extended period of limitation, we observe that only plea of department is that alleged non-payment of service tax by appellant was revealed from the audit of its records. But this aspect is no more *res integra*, by virtue of decision of Hon'ble Supreme Court in the case of **Uniworth Textiles vs Commissioner of Central Excise, Rajpur** reported as **[2013 (288) ELT 161 (SC)]**.

10. We further observe that there is a catena of judicial pronouncement to hold that suppression of facts should not merely the gross omission to pay the duty but it is an act clubbed with an intent not to pay the duty. Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Ltd. Vs Collector of Central Excise, Mumbai** reported in **1995 (78) ELT 401** has held that without the intent to evade, the duty being established the extended period of limitation cannot be invoked. There is no evidence found on record proving such intent / mensrea with the appellant to evade payment of service tax. The appellant have already been held not liable to pay the amount confirmed. Resultantly we hold that the department has wrongly invoked the extended period of limitation while issuing Show Cause Notice.

11. Accordingly, we hold that there is no rational in confirming the impugned demand even under reverse charge mechanism.

12. Above all the statutory bodies cannot be held to have an intent to evade tax. We draw our support from the decision of this Tribunal, Chandigarh Bench in the case of **M/s. Chandigarh**

**Transport Corporation vs Commissioner of Central Excise
Raipur** reported as **[2023 (7) TMI 363 (Tri-Chd)]**

13. In the light of findings above, we hold that the demand on both the counts, as mentioned above, is wrongly ben confirmed by the adjudicating authority below. Hence the order under challenge (Order-in-Original) is hereby set aside. Consequent thereto the appeal is hereby allowed.

(Pronounced in the open Court on 19/03/2024)

**(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)**

**(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)**