

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III**

Service Tax Appeal No.52235 of 2018

[Arising out of Order-in-Appeal No.74(AK)/ST/JPR/2017-18 dated 06.04.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur]

M/s. Rajasthan State Road Transport Corporation, Appellant
Chomu House, Prithviraj Marg,
C-Scheme, Jaipur,
Rajasthan.

VERSUS

Commissioner of Central Excise and Respondent
Service Tax Commissionerate,
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur (Rajasthan).

APPEARANCE:

Shri Sameer Sood, Advocate for the appellant.
Shri S.K. Meena, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.55774/2024

DATE OF HEARING: 30.04.2024
DATE OF DECISION: 17.05.2024

BINU TAMTA:

1. M/s. Rajasthan State Road Transport Corporation (The appellant) has assailed the order-in-appeal no.74(AK)ST/JPR/2017-18 dated 06.04.2018, whereby the order-in-original confirmed the demand of Rs.9,10,796/- towards service tax for providing 'parcel booking' and 'postal mail services' under the category of "Business Support Service" was upheld.

2. The appellant is an autonomous body established under the Road Transport Corporation Act, 1950 of Rajasthan and is the sole Government Public Transporter engaged in the State operating large number of buses of various categories. The appellant entered into an agreement dated 23.02.2012 with M/s.Sai Marketing & Loading Company, Jalgaon for providing open space in the carrier of buses for which they were charging the license fee on monthly basis.

3. Show cause notice dated 31.10.2016 was issued for the period, April 2012 to March 2015, as the appellant had provided space on roof of buses for transportation of parcels/goods from one designated bus Depot to another and also the space provided at the bus Depot for storage of such parcels. Consequently, demand of Rs.61,68,841/- was raised. The Adjudicating Authority dropped the demand for the period April 2012 to March 2014, as being time barred, however, upheld the demand of Rs.9,10,796/- for the period April 2014 to March 2015. On appeal by the appellant, the said order was affirmed and hence the present appeal before the Tribunal.

4. The submissions made by the learned counsel for the appellant are as under :

- (a) The appellant provides space on bare roof to Service Recipient for transportation of parcels/goods on buses with roof in consideration for hire charges.
- (b) The appellant provides open space to the Service Recipient at its bus depot for storage of parcels/goods.
- (c) The appellant does not manage distribution and logistics for the Service Recipient.

- (d) Service Recipient is accountable and responsible for loading and unloading of parcels/goods, at its own costs (including but not limited to Government levies, tolls, etc.), liabilities, and risk.
- (e) Managing distribution and logistics includes more than one activity.
- (f) Appellant's main service is Stage Carriage and not Business Support Services.
- (g) The Service Recipient is a Goods Transport Agency which issues separate load notes to its separate customers, as defined under Section 65(B(26)).
- (h) The services provided by the appellant to the Service Recipient are exempted as per Notification No.25/2012 under Clause 22.

5. On the other hand, the learned Authorised Representative relied on the findings of the Commissioner (Appeals) that as per the agreement, only the space on roof of the buses has been given on hire and not the means of transportation that is bus has been given on hire, as the bus is primarily meant for carrying the passengers, and therefore, cannot be called a means of transport of goods. Moreover, the appellant has booked their income under 'parcel service' and 'postal service' and not under 'hire charges'.

6. Having heard both sides and perused the records of the case, we find that the issues raised in the present appeal are:-

1. Whether providing space on roof for transportation of parcels/goods by the appellant to the Service Recipient can be subjected to rendition of "Business Support Service" by the Department?
2. Whether providing open space to the Service Recipient at its bus depot for storage of parcels/goods by the appellant can be subjected to rendition of "Business Support Service" by the Department?
3. Whether the appellant is entitled to exemption from taxability under Clause 22(b) of the Notification No.25/2012-ST dated 20.06.2012 of the mega exemption notification."

7. In order to ascertain the nature of activity/service rendered and also the role played by the appellant, it is relevant to consider the scope of the agreement between the appellant and M/s. Sai Marketing & Loading Company. The following terms and conditions of the agreement are set out below: -

“(a)Para 1: Transportation of general goods/small business items and domestic items from one place to another in a safe condition and possible minimum time on 50% of space available in the carrier of buses being operated on National and Interstate Highways of Rajasthan State. Such parcels to be kept only at the allocated spaces.

(b)Para 2: Dimensions of parcels specified with upper limit of size and weight. Restriction by appellant to not transport such parcels inside the bus.

(c)Para 3: Appellant to charge a rate of open space for Jaipur @50/- per square feet, at district level bus stand @ Rs.30/- per square feet and at other bus stands @ Rs.20/- per square feet per month and accordingly the Depot Committee will allot open space from the Second Party. The Second party shall bear the cost of construction of shed (tin/fibre sheet) for storage of parcels by the Second Party. Electricity charges post installment of new electricity meter/service meter shall be additionally payable as per the Rules, license fee and electricity consumption charges shall be deposited monthly by the Second Party in the concerned Chief Manager Office.

(d)Para 5: Validity of agreement for 3 years with License Fee defined.

(e)Para 6: Liability in case of damage to parcels due to delay/natural calamity or missing etc. to be borne by the Second Party.

(f)Para 7: Restriction on contents of such parcels.

(g)Para8: Booking of parcels, distribution, loading and unloading of parcels in/from the bus etc., works shall

be performed by the Second Party and expenses to be incurred therein shall be borne by the Second Party only.

(h)Para 9: Parcels to be booked at "Owner's risk" by the Second Party.

(i)Para 10: Payment of all charges, taxes and Government levies by the Second Party.

(j)Para 12: Insurance to be taken by the Second Party. Appellant not responsible for any losses.

(k)Para 14: Challans to be prepared by the Second Party.

(l)Para 15: Staff for operation of parcel business to be arranged by the Second Party on its own.

(m)Para 16: Delivery to be taken by the Second Party at the destination. Penalty of Rs.100/- per day per parcel payable to the appellant in case of non-receipt of parcels as per schedule.

(n)Para 27: No exemption in license fee to the Second Party in case of applicable bus being out of operation due to accident/mechanical fault.

(o)Para 30: Second Party not allowed to interfere in the Appellant's decision to transport posts of Department of Post and Corporation posts, stationary, State Government posts or bringing and taking items in the buses of the appellant."

From the aforesaid clauses, we find that the basic and the primary activity undertaken by the appellant was to provide the open space on the roof of the buses for transportation of general goods/small business items and domestic items. For providing the space on the buses, the appellant has been charging the license fee on monthly basis at the specified rates from M/s Sai Marketing and Loading Co. Therefore, under the agreement, the nature of activity to be performed by the appellant was limited only to provide the space on the roof of the buses and the entire work relating to booking, transit, delivery, loading, unloading of parcel, and specific allied service were the sole responsibility of M/s Sai Marketing & Loading Co. The purpose of the agreement is to allow M/s. Sai Marketing & Loading Co.

to utilise the space available on the roof of buses for keeping parcels to be transported. Similarly, under the agreement, the appellant is also required to provide open space on the bus depots for the maintenance of the parcels. The dominant factor in this transaction is providing of the space by the appellant, which is related to the transportation of the goods. The relevant findings in the impugned order also supports the stand of the appellant which reads as under :

“ I find that the appellant entered into an agreement with M/s Sai Marketing & Loading Co., Jalgaon. The appellant has furnished a copy of the said agreement and on perusal of which I observe that **it is an agreement for allowing them to utilize the space available on the roof of buses for keeping parcels of small commercial/domestic goods for a consideration called license fee.**”

8. Keeping in view the nature of the activity, we may examine whether the same falls within the definition of “Business Support Services” as defined in Section 65 (104c), which is quoted here under:

“65.(104c) "Support Services of Business or Commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

9. The definition above, specifies as to what constitutes support services of business. On perusal thereof, we do not find that the activity of providing open space on hire can be included in any of the activities specified in the definition. The Revenue has nowhere

substantiated that the appellant managed distribution and logistics of M/s Sai Marketing & Loading Co., rather in terms of the agreement, they are themselves responsible for all the related activities. The terminology "managing distribution and logistics" cannot be invoked to cover the instant activity under the definition of "Business Support Service". Thus, the answer to issue no.(i) and (ii) are decided against the Revenue and in favour of the appellant.

10. We may now consider the issue of exemption under Clause 22(b) of Notification No. 25/2012 ST dated 20.06.2012, which is quoted below: -

"Clause 22(b) – Services by way of giving on hire –
(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
(b) to a goods transport agency, a means of transportation of goods."

Bare reading of Clause 22 above shows that it covers services by way of giving on hire and considering the purpose of the agreement between the two, it is applicable to the present case. Sub-clause (a) of Clause 22 is not applicable in the facts here but we find that as M/s Sai Marketing & Loading Co. being a Goods Transport Agent to whom the open space has been given on hire for transportation of goods/parcels, sub-clause (b) of Clause 22 applies as it speaks of hire to a goods transport agency, a means of transportation of goods. The exemption provided in Clause 22 covers the activity in question and therefore, the appellant is not liable to pay the service tax.

11. The Authorities below have dealt with the issue in a very superficial manner as they have taken into consideration only the definition of 'Service' as per Section 65B(44) that any activity carried out by a person for another for consideration is covered by the definition of "Service" and since the appellant were not engaged in transportation of goods by road service, the service provided was not covered by Clause (p)(i) of Section 66D. On the applicability of the benefit of exemption under Clause 22 (b) of the Notification no.25/2012 - ST, the Authorities took a very hypothetical view to say that the appellant had booked the income from the above service under the head of 'parcel service' and 'postal mail service' and not under the 'hire charges'. The fact is that the agreement here does not speak of parcel or postal mail service. The agreement is clear that the purpose of it is to make available the space on the roof of the buses to M/s Sai Marketing & Loading Co., which is hiring of space for license fee. We do not agree with the findings recorded in the impugned order that it is only when a means of transportation of goods has been given on hire to a goods transport agency then such service of hiring is exempted from the payment of service tax, whereas in the present case only space on roof of the buses has been given on hire for keeping the goods/parcel for transportation and not the means of transportation, i e. bus has been given on hire. It was, therefore, concluded that the bus, which is primarily meant for carrying the passengers from one place to another, cannot be called the means of transport of goods and therefore, the appellant is not eligible to claim

exemption under Clause 22 (b) of the notification. The said findings are unsustainable.

12. We are, therefore, of the view that the order deserves to be set aside. The appeal is, accordingly allowed.

[Order pronounced on 17th May, 2024]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.