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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.10241 of 2014

(Arising out of OIA-SUR-EXCUS-001-APP-518/13-14 dated 15/11/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Heena Tours & Travels **.....Appellant**
S-2016, Baligum Squre,
Opp. Linear Bus Stop,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.....Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

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Service Tax Appeal No.12906 of 2014

(Arising out of OIA-SUR-EXCUS-001-APP-08-14-15 dated 22/04/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Heena Enterprises **.....Appellant**
S-2016, Belgium Square,
Opp. Linear Bus Stop, Surat,
Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.....Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

APPEARANCE:
Shri. S.S.Gupta, Advocate & Shri. Mehul Jivani, CA for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

Final Order No. 12071-12072 /2024

DATE OF HEARING: 16.04.2024
DATE OF DECISION:20.09.2024

RAJU

These Appeals has been filed by M/s. Heena Tours and Travels and Heena enterprise.

2. Learned Counsel pointed out that the appellants are engaged in providing Tour Operator Service. The customers of the appellant can be divided broadly into following two categories:

1. Customers of Pre-Planned Package Tour.
2. Customers of Customized Tour.

2.1 He pointed out that the present dispute relates to both these types of tours made to Jammu & Kashmir (J&K). He pointed out that a show cause notice was served to the appellant for the period from 2006-07 to 2010-11 and demand made in said demand was confirmed vide Order-In-Original dated 20.02.2013 and demand made in another show cause notice issued on 27.11.2012 was also confirmed on 24 January, 2014. The said demands were upheld by the Commissioner (Appeals) and consequently, these appeals have been filed.

2.2 Learned Counsel pointed out that in case of Pre-Planned Package Tours, the activity of planning, scheduling, organizer or arranging (Planning, Scheduling, Organizing And Arranging) takes place prior to booking of tour by the customers. The appellants prepare brochure giving details of the location of visit, dates of departure of tours etc. He argued that the brochures are prepared after completion of the event of planning, scheduling and part of organizing of likely Hotels etc. He argued that at the time of planning, scheduling, etc, in such cases, there is no customers available and therefore in absence of a client there could not be any possibility of provision of any taxable service.

2.3 Since at the time of planning, scheduling etc., of pre-planned package tours there are no identified service recipients, it was a service to self and therefore not a taxable service. He pointed out that in case of the Second class of customers for whom they make customized tour. These services are rendered after the customer approaches the appellant.

2.4 Learned Counsel relied on the CBEC Circular No. 108/2/2009-ST., dated 29.01.2009. In the said circular issued in relation to taxable service of construction of residential complex clarified that builder rendered the self-service before the same or purchased by customers. In this regard, he argued that in the case Pre-Planned Tours, since all the activities are completed before the client approaches the appellant, the ratio of the said circular would apply to their case as well. He also relied on the decision of Hon'ble Apex Court in the case of LARSEN & Toubro Ltd.-2014 (303) ELT 3

(S.C.) to assert that the service tax would be applicable only to the services provided after the customer approaches the appellant. The cost of planning, scheduling etc which happens prior the customers approaching the appellant cannot be included in the assessable value for the purpose of service tax. He relied on para 115 of the decision of the Hon'ble Apex Court in case of LARSEN & Toubro Ltd (supra). He pointed out that prior to the date on which the client approaches the appellant in the case of Pre-Packaging Tours, all the activates are done for themselves and not for any client. Therefore, those activities are in the nature of self service which cannot be taxed under the Service Tax Act, 1994. He argued that on the site where there client go for their tour, the manager of the appellant accompanies them and ensure supply of following services:-

i. *Rooms are allotted to each customer.*
ii. *Food is available in time.*
iii. *Bus or car for sightseeing to tourist spot is available on time.*
iv. *Permission from military, booking of shikara ride, booking of horse, etc. are all made available to the customer.*

2.5 He argued that since these activities are performed in Jammu & Kashmir, It can be said that the entire service is rendered in Jammu & Kashmir.

2.6 Learned Counsel relied on the Rule 3(ii) of the Export of Service Rules, 2005 to assert that if the taxable service is partly performed outside India that it shall be treated as performed outside India. He further argued that Circular No. 111/05/2009-ST dated 24.02.2009 has clarified that the services falling under Rule 3(1) (ii) of the Export of Services Rules, 2005 shall treated as export of services if place of performance is partly outside India. He argued that in terms of proviso to Rule 3(ii) of the Export of Services Rules, 2005, entire service of tour operator will be considered as rendered outside India. He relied on the following decision for this purposes.

- B.A. RESEARCH INDIA LTD 2010 (18) S.T.R. 439 (Tri. Ahmd.)
- SGS INDIA PVT. LTD 2014 (34) S.T.R. 554 (Bom.)
- MAERSK INDIA PVT. LTD 2015 (38) S.T.R. 1121 (Bom.)

2.7 He further relied on the decision of Tribunal in the case of Creative Travels Pvt. Ltd.-2022 (10) TMI 9-CESTAT New Delhi wherein para 14 following has been observed.

> *"14. The change in the statutory provision has added elements to the activity that makes for being tour operator both the unamended and amended version, entirety of performance in*

> *India is the criterion for subjecting the consideration to tax. That is the only conclusion that can be arrived at from perusal of Export of Service Rules, 2005 which categorizes the scheme of export in terms of the enumeration of 'taxable service' in section 65(105) of Finance Act, 1994. The adjudicating authority has, Instead, dilated on section 65(115) as the foundation of the demand and erroneously so."*

2.8 Learned Counsel further pointed out that the Service Tax is a Destination Based Consumption Tax. He argued that place of provision of service tax has to be determined to levy tax on the same. He relied on the decision of Larger Bench in the case of Paul Merchants Ltd.-2013 (29) STR 257 (Tri.-Del.)

2.9 The Learned Counsel pointed out that the appellant had bonafied belief that the services provided by them or not taxable relying on section 64 of Finance Act, 1944 and on departmental letter F. No. V/GST/03/GEN/INS/01/2004 dated 17.08.2004. He argued that the appellants were under the impression that Service Tax being destination based Consumption tax. The services provided by them were not taxable. In these circumstances, it was argued the extended period of limitation cannot be invoked as there was no intent to evade duty. It was argued that the matter was relates to interpretation of statute. It was also argued that under EA-2000 audit for the period of October, 2005 to March 2009 taken up in the month of May, 2009. The entire gambit of the appellants activities were scrutinize under audit.

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. In the instance case, it is seen that the service provider is located in the taxable territory. The service recipient is also located in the taxable territory. It is the claim of the appellant that the service is performed partly within India but partly in territory excluded from the jurisdiction of Finance Act, 1994 by virtue of Section 64. According to the appellant place of the performance of Service is relevant. The appellant has described the activities as follows:

> *"Thus, specified activity is said to have taken place in the place where such activities are used. In the present facts, the brochure indicates the following itinerary:*
> ***Day 1 Srinagar**: Arrive Srinagar and transfer to Srinagar Hotel. Evening is free for rest/ shopping. Night halt at Srinagar.*
> ***Day 2 Srinagar** - Sonmarg - Srinagar: After breakfast full day visit Sonmarg (Subject to Military Permission) enjoy adventurous Sledge Car Ride at this exotic snow point. Night halt at Srinagar.*
> ***Day 3 Srinagar**: after breakfast enjoy Shikara Ride at Dal Lake for 2 hrs (at our cost). After lunch, sightseeing of Shankaracharya Temple, Nishat Baug 7 Shalimar Baug. Night halt at Srinagar.*

> ***Day 4 Srinagar Gulmarg*** *- Srinagar: After breakfast proceed to Gulmarg (3hrs. journey) to enjoy Gandola Cable Car Tide (at Your own cost) also enjoy photography, horse riding & Shopping at this beautiful snow point. In the evening return back to Srinagar (3hrs. journey). Night halt at Srinagar.*
> ***Day 5 Srinagar-*** *Pahalgam: After breakfast proceed for Pahalgaum (4 hrs. journey), After lunch enjoy shopping & natural beauty of this exotic place Night halt at Pahalgaum.*
> ***Day 6 Pahalgam:*** *After breakfast enjoy the natural beauty at Chandanwadi (at our cost), enjoy hours riding at this at beautiful place (at your own cost). Night halt at Pahalgaum.*
> ***Day 7 Pahalgam Srinagar:*** *After breakfast transfer to Srinagar Airport to board your flight for Mumbai with Memorable experience of the tour conducted by Heena Tours & Travels.*

5. The legal provision related to the case are as follows:

5.1 The Section 64 of the Finance Act, 1994 reads as follows:

> *"**Section 64. Extent, commencement and application.***
> ***(1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.***
> *(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*
> *(**3) It shall apply to taxable services provided on or after the commencement of this chapter**."*

5.2 Section 66 of the Financed Act 1994 reads as follows:

> *"66. Charge of service tax – There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. of the value of taxable services referred to in sub-clauses*
> *…….....*
> *……*
> *…….. of clause (105) of section 65 and collected in such manner as may be prescribed.]"*

5.3 Clause 65 (105) (n) of the Finance Act, 1994 prescribes liability of Service Tax in respect of Service provided "to any person, by a tour operator in relation to a tour". The word 'Tour Operator' is defined in Section 65 (115) of the Finance Act, 1994 as follows:-

> *"(i) For period 10/09/2004 to 15/05/2008:*
>
> *(115) 'tour operator' means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport and includes any person engaged in the business of operating tours in a tourists vehicle covered by a permit granted under the Motor Vehicle Act, 1968 (59 of 1988) or the rules made there under.*
>
> *(ii) For the period 15/05/2008 to 30/06/2012:*

(115) 'tour operator' means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) for any mode of transport and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made there under."

Explanation---- For the purpose of this clause, the expression 'tour' does not Include a journey organized or arranged for use by an educational body other than a commercial training or coaching centre, imparting skill or knowledge or lessons or any subject or field."

5.4 The word 'tour 'was defined in Section 65 (113) as follows:

"(113) "tour" means a journey from one place to another irrespective of the distance between such places."

5.5 It is apparent that the definition of tours operator has two parts:-

Tours Operator" means

(i) "Any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport,

(ii) and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made there under".

Both these are individually taxable services as held in the case of M/s. Cox & Kings India Ltd CESTAT Mumbai Interim Order No. 104/2023 dated 19.10.2023 as extracted in para 7.3 below. In the first category the taxable activities are merely 'Planning, Scheduling, Organizing and Arranging '. The activities of 'Planning, Scheduling, Organizing and Arranging' involved booking of transport, hotels, and meals and/or organizing tour guides. The tour operator organises hotels, meals, tour guides or transport in Jammu and Kashmir. These are in the nature of input services provider needed for 'Planning, Scheduling, Organizing And Arranging '. These are input services for the appellant. These services are received by appellant and these may

not be taxable at the hands of the appellant. The service tax is not on 'tour' but on the tour operator services. It is in the nature of intermediary services. The tax is only on Planning, Scheduling, Organizing and Arranging activities and not on 'tour' itself. The PLANNING, SCHEDULING, ORGANIZING AND ARRANGING activities happen in taxable territory and that is the only pre-conditions for levying tax.

6. We find that the learned Counsel has heavily relied on the decision of Larger Bench in the case of M/s. Cox & Kings India Ltd. CESTAT Mumbai Interim Order No. 104/2023 dated 19.10.2023. We find that the decision of Larger Bench related to outbound tours to locations outside India. In the instant case, the issue relates to conducting of tours within territory India. The decision in the case of M/s. Cox & Kings India Ltd. related to service provided in respect of clients who would travel outside India. Thus, the ratio of this decision is not relevant for the instant case where the destination of tours is within India. In the said decision great reliance has been placed on the provision in Export of Services Rules, 2005. The said Rules relate to the services where either the client or the location of performance or immovable property is located outside India. In the instance Case, the entire services are provided within the territory of India and therefore, the provisions of the Export of Services Rules, cannot be applied to the instant case. These Rules have no applicability in the instance case as neither the service provided nor the service received was outside the territory of India. For the same reason, the Circular No. 111/5/2009-ST dated 24.02.2009 has no applicability in the instance case.

7. Learned Counsel also relied on the Service Tax Trade Notice No. 13/2004 dated 28.04.2004 issued by the Additional Commissioner, Chennai. It reads as follows:

> *"On a representation as to whether service tax is applicable in cases where service providers located outside the state of Jammu and Kashmir have rendered services in the state of Jammu and Kashmir, it is clarified that in terms of Finance Act, 1994, service tax is not applicable to services provided in the State of Jammu & Kashmir, irrespective of the service provider being from the State or otherwise.*
>
> *The content of this Trade Notice may be brought to the notice of all concerned."*

The above circular applies only to cases where the services are provided in the state of Jammu and Kashmir.

7.1 In the instant case, it is clear that the services are provided outside state the of Jammu and Kashmir. In the Order-In-Original, the following has been recorded as the manners of providing services.

> *"The assessee is engaged in the business of conducting and operating the package tour in the state of J&K. The various steps which are required to be carried out for conducting the tour are as follows:-*
>
> *a) Determining the probable dates and venues of the tour.*
>
> *b) Finalizing the itinerary of the tour.*
>
> *c) Booking of the Accommodation in Hotels in the State of J&K*
>
> *d) Planning and booking for Traveling through bus on tour.*
>
> *e) Other On - Tour services.*
>
> *f) Meals on Tour.*
>
> *g) Service of Tour Leader accompanying Tour."*

7.2 It is apparent that the appellant is doing the Planning, Scheduling, Organizing And Arranging of jobs listed in a & g above within the India from its own office. The booking of hotel for accommodation is an input service for the appellant. The Hotels are not owned by the appellant. The hotels are established hotels located in Jammu and Kashmir. The appellant books the hotels and the hotels permit the clients of appellant to stay in the hotels. In this arrangement, the service recipient of hotel service are not the 'tourist' clients of the appellant but the services are provide to the appellant.

7.3 The appellants have argued that the services are consumed in Jammu and Kashmir. It is seen that services proved by the appellant consist of 'Planning, Scheduling, Organizing and Arranging' tours. The Larger Bench in the case Cox & Kings Limited, Cestat Mumbai Vide Interim Order No. 104/2023 dated 19.10.2023 has observed as follows:

> *"34. As noted above, the first part of the definition of a "tour operator" defines it to mean any person engaged in the business of planning, scheduling, organizing or arranging tours by any mode of transport. This would be an exhaustive definition of a "tour operator". However, the definition also provides that a "tour operator" would include any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act or the Rules made thereunder.*
>
> *35. This portion of the definition of a "tour operator" also existed prior to the amendment in the definition of a "tour operator" on 10.09.2004. The intention in the amendment in 2004 was clearly to explain the definition of a "tour operator"*

and to bring within its fold any person engaged in the business of planning, scheduling, organizing or arranging tour by any mode of transport. "Inclusive" part would best be interpreted in the normal standard sense to comprise of or consist of. The second part of the definition only removes any doubt that any person engaged in the business of operating tour in a tourist vehicle covered by a permit granted under the Motor Vehicles Act or Rules made there under would not be excluded from the definition of a „tour operator" contained in the first part. It needs to be noted that a permit granted under the Motor Vehicles Act or the Rules made there under does not operate beyond the jurisdiction of the country. The first part of the definition of a "tour operator" is by any mode of transport and, therefore, there is no restriction about the territorial jurisdiction of the country. It only deals with the planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport.

36. It is, therefore, not possible to hold that what is contained in the inclusive clause of the definition is necessarily not contained in the first part of the definition as was held by the division bench in the earlier decision in Cox & King."

Thus, the service consists only of Planning, Scheduling, Organizing And Arranging tours.

7.4 The situation can be explained more elaborately with following examples:-

i) If a person uses services of a tailor and uses said tailoring services for stitching of suit in Delhi. Thereafter, if he takes and uses the suit only in Jammu and Kashmir does it mean that the service of tailor has been used in Jammu and Kashmir. The service of tailor is entirely provided in Delhi and it does not matter where the suite is worn therefore.

ii) Similarly it a coaching institute located in Delhi provides training to a client and he uses the said training for admission to university in Jammu and Kashmir, then it cannot be held that service of training is provided or consumed in Jammu and Kashmir. It remains service consumed in Delhi.

iii) If a ticket for travelling from New York to Landon is booked from a travel agent in Delhi. The service is provided in Delhi by the travel agent and it cannot be said that the service is consumed in abroad i.e. either in New York or in Landon.

7.5 Similarly, in the instant case service of Planning, Scheduling, Organizing and Arranging is provided in taxable territory, thereafter it does not matter if the tour actually passes through non-taxable territory.

8. Another argument of the appellant is that service tax is destination based consumption tax. There is no doubt that service tax is a destination based consumption tax. The appellant has relied on following decision in support of his claim that the service tax were provided in Jammu and Kashmir.

- Paul Merchants Ltd. 2013 (29) S.T.R. 257 (Tri. - Del.)
- SGS India Pvt. Ltd. 2014 (34) S.T.R. 554 (Bom.)
- All India Fedn. of Tax Practitioners 2007 (7) S.T.R. 625 (S.C.)

8.1 In the case of Poul Merchants-2013 (29) STR 257, the following point of difference was referred to the third member.

> *"Para 60(v) Whether the destination of the impugned service to be determined on the basis of location of the consumer of the service in India or the location of the person abroad who requested for the service to be provided in India and paid for it and other criteria laid down in Export of Service Rules, 2005?"*

The question was examined in the following manner by the third member

> *"70.1 The services are intangible and can be provided by several modes. For example India, from India to a service consumer of some other country in India and that service is meant for use abroad. Third mode one mode of cross border service transaction would be where the service provided by a person in India is received by a person located abroad. Second mode of service export can be when service is supplied by a service provider located in of service export would be where service is supplied from India through commercial or physical presence in territory of any other country, like a software company providing the services of software development to its client in USA by sending its employees to USA In 2nd and 3rd types of service transaction, the criteria of crossing the international border would be impossible to apply".*

> *"77. The point of difference as mentioned in Para 60 of the referral order has been answered by third Member as under :-*
>
> > *"In view of the above discussion, the points of difference, mentioned in para 60 are answered as under :-*
> >
> > *(i) The term "export" has not been defined either in Article 280(1)(b) or in any of the article of the Constitution of India. Though the Apex Court's judgments in the case of the State of Kerala v. The Cochin Coal Company Ltd. [(1961) 2 STC 1 SC] and Burmah Shell Oil Storage & Distribution Co. of India v. Commercial Tax Officer & Others reported in (1960) 11 STC 764 (SC) explain the meaning of the term "export", the ratio of these judgments which are with regard to export of goods, is not applicable for determining what constitutes the export of services.*

There is no question of Export of Services Rules, 2005, being in conflict with Article 286(1)(b) of the Constitution of India.

(ii) The principle of equivalence between the taxation of goods and taxation of service had been laid down by the Apex Court in the case of Association of Leasing & Financial Service Companies v. Union of India (supra) and All India Federation of Tax Practitioners v. Union of India (supra) in the context of constitutional validity of levy of Service Tax on certain services. This principle does not imply that Service Tax should be levied and collected in exactly the same manner as the levy and collection of tax on goods or that export of service should be understood in exactly the same manner in which the export of goods is understood. In fact the question as to what constitutes the export or import of service was neither raised nor discussed in the above-mentioned judgments of the Apex Court. As discussed in this order, the Export of Services Rules, 2005 are in accordance with the Apex Court's ruling in the above-mentioned judgments that Service Tax is a value added tax, which in turn is a destination based consumption tax in the sense that it is levied on commercial activities, and it is not a charge on the business but a charge on the consumers. There is nothing in Export of Service Rules, 2005 which can be said to be contrary to the principle that a service not consumed in India is not be taxed in India.

(iii) What constitutes export of service is to be determined strictly with reference to the provisions of Export of Services Rules, 2005. Not doing so and leaving this question to be determined by individuals tax payers or tax collectors for each service, based on their deductive ability would result only in utter confusion and chaos.

(iv) Money transfer service is being provided by the Western Union from abroad to their clients who approached their offices or the offices of their agents for remitting money from to friends/relatives in India. The service being provided by the agents and sub-agents is delivery of money to the intended beneficiaries of the customers of WU abroad and this service is "business auxiliary service", being provided to Western Union. It is Western Union who is the recipient and consumer of this service provided by their agents and sub-agents, not the persons receiving money in India.

(v) The consumer of the service provided by the agents and sub-agents of WU in India is the Western Union, located abroad who use their services for their money transfer business not the persons receiving money in India. Since the service provided is Business Auxiliary Service classifiable under Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 2005, and has been provided in relation to business of Western Union located abroad, and the payment for the service has been received in India in convertible foreign currency, the same has to be treated as export of service. It is the person who requested for the service and is liable to make payment for the same who has to be treated as recipient of the service, not the person or persons affected by the performance of the service. Thus, when the person on whose instructions the services in question had been provided by the agents/sub-agents in India and who is liable to make payment for these services, is located abroad, the destination of the services in question has to be treated abroad. The destination has to be decided on the basis of the place of consumption, not the place of performance of service, in the case of this service.

(vi) Reimbursement of advertisement and sales promotion activities received from WU is not taxable as the same are for the services provided to WU, which are export of service.

(vii) The question of time-bar is not relevant when the main question has been answered in favour of the agents & sub-agents.

(viii) & (ix) These questions are no longer relevant when the main question has been answered in favour of the agents and sub-agents.

> *(x) When the services provided by the sub-agents have been held to be export of service and hence not liable for Service Tax, the question of their eligibility for exemption under Notification No. 6/2005-S.T. is irrelevant and has not been gone into.*
>
> *(xi) The services provided by the agents and sub-agents throughout during the period of dispute are classifiable as "Business Auxiliary Service" under Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 1994 and the same have been exported in terms of the provisions of Rule 3(1)(iii) read with Rule 3(2) of the Export of Services Rules, 2005 and hence no Service Tax is leviable.*
>
> *(xii) There is no need to remand the cases of sub-agents. The same must be decided on the basis of the majority opinion."*

In the said case**,** it was held that the person paying for the service is the service recipient. In the instant case, the payments for hotel booked are done by the appellant. It is apparent that the service recipient of hotel booking service is the appellant and not his 'tourist' clients as the payments are done by appellant and not by his clients.

8.2 In the case of SGS India Pvt Ltd-2014(34) S.T.R 554 (BOM.) relied by the appellant it is observed in Para 17 as follows:-

> ***"17.*** *The Tribunal was considering the respondents' challenge to the order of the adjudicating authority confirming the demand and penalty. The argument before the Tribunal on behalf of the respondent was that the respondent is a testing agency. The contract of service was with the overseas purchaser of goods. Thus, the privity of contract of the respondent is with the buyers of the goods who are located or situated outside India. Further, the argument was that this is a contract based tax. The contract is of services. There is no contract in this case with the manufacturer of goods in India. Further, there is no contract and no privity between the respondent and the exporter of the goods who is stated to be based in India. It is in these circumstances that the exemption notification though required to be strictly construed has rightly been construed in favour of the respondent assessee before us."*

In this case as well the person entering into contract with service provider was held as service recipient. It is the appellant who enter into contract with hotel owners, guides, vehicle owners etc. Therefore, he is the service recipient in respect of the services provided by them. The 'tourist' clients of the appellant are located within the taxable territory of India and all their transactions happen with taxable territory of India.

8.3 The hotels are the service providers to the appellant. Similarly the tourist guides or vehicle owners who take the tourist around in J & K might be located in Jammu & Kashmir are service providers to appellant and not to tourist who are clients of appellant. The service provided by these guides, vehicle owners or hotels, to the appellant could possibly be outside the purview of service tax. In the instant case there is a contract between the hotels and the appellant, and not between the tourist clients of appellant and

hotels. Therefore, the hotels are provider of service to the appellant and not to the tourist clients. The services of planning, organizing etc and by the appellant to clients are provided within the taxable territory of India (outside Jammu & Kashmir)

8.4 It is seen that in the case of SGS India Pvt. Ltd the contract of the domestic, service provider was with overseas client, although in respect of goods located in India. In the instant case, the contract of appellant located in taxable terribly is with his clients located in taxable territory. The service provider to the appellants may be located in non taxable territory. However, there is no contract of appellant's 'tourist' clients with the hotel owners, guides or transporters. Therefore, the facts are different and the decision is therefore distinguished.

8.5 From the above analysis, it is apparent that,-

i) Service Tax is not leviable to services provided in Jammu & Kashmir by virtue of Section 64 of the Finance Act, 1994.

ii) In the context of the present case Export of Services Rules, 2005 and Service Tax Taxation of Service (Provision for outside India and received in India) Rules, 2006 have no application as no territory outside India is involved in the instant case.

iii) *Circular No. 111/5/2009-ST dated 24.02.2009 has no applicable in the instance case as there is no territory outside India involved.*

iv) *Consequently, the case law relied by appellant involving facts where the clients travel outside India ae not relevant in the instant case.*

8.6 The argument raised by appellant is that the services are consumed in Jammu and Kashmir, and not in taxable territory. It has seen argued that tours are booked for travelling to Jammu and Kashmir and therefore the clients consume the services in Jammu and Kashmir. We find that the taxable service provided by the appellant is 'Planning, Scheduling, Organizing and Arranging '. All activities of Planning, Scheduling, Organizing and Arranging are conducted in taxable territory. If a person uses services of a tailor in Delhi for a stitching a suite only to be worn in Jammu and Kashmir, can he claim that the service has been used in Jammu and Kashmir. If a person engage services of a coaching centre in Delhi for an exam conducted in Jammu and Kashmir can be claimed that the coaching service has been provided in Jammu and Kashmir.

9. The appellant has argued that in case of pre-planned purchase torurs, before preparation of voucher, listing the itenary of place of visit takes place in India other than J&K. However, at this time of planning/scheduling the such customer is not available. Therefore, it was submitted by appellant that such services which are rendered without reference to any customer shall be considered as self-service. The appellant has also argued that in case of pre-planned package tours, the activity of performing. Scheduling part of organizing takes place prior to booking of tour by customers.

9.1 We find that the claim made by the appellant that activities are made Planning, Scheduling, Organizing and Arranging happens prior to the Customer approaching very doubtful. It is seen that the activity of Planning, Scheduling, Organizing and Arranging involves booking of train and airlines which cannot be done without the names of the clients. The said activity also involves booking of rooms which cannot be done without ascertaining the number of clients. The activity of organizing vehicles can also not been done without determination of number of clients. The offer made in Pre-Planned Package Tours is only in the nature of an offer to Plan and organize tours. it cannot be the situation that irrespective identify of any clients, the appellants book airline tickets, book hotels, book vehicles, book tour guides. Thus, it can be seen that the claim of the appellants that in case of Pre-Planned Package Tours activities of Planning, Scheduling, Organizing and Arranging are already completed before the customer approaches the appellants. In that sense, the only an offer is prepared before the customer approaches and all activities of Planning, Scheduling, Organizing and Arranging happen after the approach of customer. These, facts are however no evidence is available on record to show that the appellant complete the activity of Planning, Scheduling, Organizing and Arranging prior to customer approaching and therefore the said claim remains unsubstantiated and not tenable.

10. Another argument raised by the appellant is that the service provided by there is a composite service where part of the service is provided in Jammu and Kashmir. It has been argued that in absence of machinery provision to bifurcate the value of service provided in taxable territory and that provided outside taxable territory, no tax can be levied. Reliance is placed on decision in case of Indian Association of Tours Operators-2017 (5) GSTL 4 (Del.). We find that it is a misplaced argument. As suggested above the entire service provided by appellant, which is in the nature of Planning, Scheduling, Organizing And Arranging, is performed in taxable territory. Its input service providers who may be hotels, tour guides or vehicle owners

may be located in non-taxable territory. Those are input services for the appellant. Those are not services provided by appellant to its clients but services received by appellant from its vendors. Moreover, those are only input services in the course of planning, organizing etc., which are taxable.

11. The entire activity of PLANNING, Scheduling, Organizing And Arranging is undertaken in the taxable territory in the instant case. The taxable service is activity of Planning, Scheduling, Organizing and Arranging. In these circumstances, even if the client tours a non taxable territory, while the service of Planning, Scheduling, Organizing and Arranging is provided in taxable territory, the service will remain taxable as provided in taxable territory. The tax has therefore been rightly demanded.

12. Now coming to the issue of limitation, we find that the issue involved in the instant case, Section 64 of the Finance Act, 1994 which specifically excludes the State of Jammu and Kashmir from levy of Service Tax provision. The definition of 'tour operator' and "tour" itself was a contested issue which was considered in detail by the Larger Bench in the case of M/s. Cox & Kings India Ltd. CESTAT Mumbai vide Interim Order No. 104/2023 dated 19.10.2023. In these circumstances, we are of the opinion that they may not have been any intent to evade payment of duty as a person might hold bonafide belief in the instant case that he is not liable to levy of service tax. No specific act of mis-declaration or suppression has been pointed out in the earlier proceedings. Consequently, we are of the opinion that, extended period of limitation cannot be invoked for recovery of taxes.

13. The appeal is therefore allowed partly in so far as the issue of limitation is concerned. The matter is remanded to the original adjudicating authority for determination of duty liability if any within the period of limitation.

(Pronounced in the open court on 20.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi