

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51062 of 2019

[Arising out of Order-in-Original/Appeal No. DDN/EXCUS/000/APP/36/36/2018-19 dated 12.02.2019 passed by the Commissioner of Central Goods & Service Tax (Appeals), Dehradun]

M/s. Century Pulp & Paper

...Appellant

Ghanshyamdham,
Lalkuan, Nainital,
Uttarakhand - 263139

VERSUS

Commissioner of CGST - Dehradun

...Respondent

E-Block, Nehru Colony,
Haridwar Road, Dehradun,
Uttarakhand - 248001

APPEARANCE:

Shri K. Vaish, Advocate for the Appellant

Shri Aejaz Ahmad, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 27.03.2025

DATE OF DECISION: **25.07.2025**

FINAL ORDER NO. 51070/2025

DR. RACHNA GUPTA

M/s Century Pulp and Paper (Prop. Century Textiles & Industries Ltd.), is engaged in the manufacture of excisable goods namely "Writing Printing Paper, Paper Board and Tissue Paper" falling under Chapter 48 and "Rayon Grade Pulp" falling under Chapter 47 respectively of the first schedule to the Central Excise Tariff Act, 1985. Appellant is also holding Service Tax Registration for discharging their liability of Service Tax under the provisions of Finance Act, 1994.

2. During the course of examination of records of the appellant for the period from July 2012 to November 2015, the officers of

Central Excise & Service Tax, Audit-I Commissionerate, Meerut, noticed that the party had entered into agreements with various persons for providing bus services to the factory employees and school going children on various routes on the terms and conditions mentioned in those agreements. Three such agreements entered by them after 01.07.2012 with (1) M/s Shree Sarveshwari Tour & Travels, (2) M/s Sahni Travels, Haldwani (3) M/s Bansal Travels, Rudrapur

3. In view of the terms and conditions of the said agreements, it was observed:

- The appellant in addition to paying per day charges, agreed to pay the amounts towards diesel & mobil oil consumed on actual basis (subject to certain restrictions detailed in the said agreement).
- It also agreed to pay Permit Fee, Sales Tax, Road Tax (77.41% of the total Road tax) on submission of receipts.
- The appellant also agreed to pay the Service Tax (as applicable) directly to the department either as reimbursement or as reverse charge.

The department formed the opinion that the appellant was receiving the service of renting of a motor vehicle designed to carry passenger. The Notification No. 30/2012-ST dated 20.06.2012 (as amended from time to time) has been issued by the Central Government which has become effective w.e.f. 01.07.2012. Vide said notification, *inter alia*, following service has been notified in respect of which a recipient of Service has to pay the applicable Service Tax: -

"The taxable services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any

person who is not in the similar line of business by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory."

Further, it was observed that vide Sr. No. 9 of the Notification No. 26/2012-ST dated 20.06.2012 (as amended), an abatement of 60% on the gross taxable value has been provided in respect of such services. Accordingly, it appeared to the department that the appellant is liable to pay Service Tax to the tune of Rs.36,57,747/- for the period from July 2012 to September 2012 under Reverse Charge Mechanism.

4. The said amount of service tax was proposed to be recovered vide show cause notice no. 16/2016 dated 28.12.2016 with the proposal of recovering proportionate interest and imposition of appropriate penalties. The said proposal was confirmed vide order in original no. 31/2017-18 dated 16.05.2017. In an appeal against the said order, the Commissioner Appeals vide order in appeal no 36/2018-19 dated 12.02.2019 had set aside the order in original on the ground that extended period was wrongly invoked while issuing the show cause notice. Accordingly, Commissioner (Appeals) remanded the matter back to the original adjudication authority for the adjudication of the demand afresh for the normal period only. Being aggrieved of the said order, the present appeal has been filed by Century Pulp and Paper (the appellant) .

5. We have heard Shri K. Vaish, learned Advocate for the appellant and Shri Aejaz Ahmad, learned Authorized Representative for the department.

6. Ld. Counsel for the appellant has mentioned that the bus services as availed by the appellants were exempted from the payment of service tax under the entry no. 23 (b) of Notification NO. 25/2012 dated 20.06.2012. The said entry exempts contract carriage for transportation of passenger from payment of service tax. It is submitted that once the service tax was not payable the question of the payment thereof does not arise. Applicability of reverse charge mechanism under notification no. 13/2012 dated 20.06.2012 has wrongly been invoked. The buses hired by the appellants fall under the definition of contract carriage which were not used / hired by the appellants for the purposes of tourism but for the transportation of passenger (factory employees and school going children on various routes). The appellant otherwise was reimbursing the bill amount towards diesel and mobil oil charges to the service provider. It is also brought to notice by the Ld. Counsel for the appellants that department had also filed an appeal against the impugned order challenging the setting aside demand for the extended period. However, the appeal was withdrawn due to the monetary limit policy. With these submissions, the demand confirmed even for the normal period vide the impugned order (O-I-A dated 12.02.2019) is prayed to be set aside. Appeal is accordingly, prayed to be allowed.

7. While rebutting the submissions Ld. DR, foremost, has reiterated the OIO dated 16.05.2017 and O-I-A dated 12.2.02019. It is also submitted the rented / hired buses (contract carriage) were excluded from the purview of the clause 23(b) of mega exemption notification no. 25/2012-ST dated 20.06.2012 and as

such appellant was liable to pay service tax under reverse charge mechanism. Hon'ble High Court of Allahabad, in the case of Anil Kumar Agnihotri Vs. CCE, Kanpur report at 2018 (10) G.S.T.L. 288 (All.), has taken a contrary view to the decision in case of Red Rose Tour & Travels Vs. CCE & ST, Lucknow [F.O. No. ST/A/72383/2008-CU{DB} dt. 19.09.2018] by holding that it makes no distinction between renting or hiring as in common usage, both terms were commonly used as synonym irrespective of whether the service provider retains possession and control of the vehicle or passes it to the consumer and such services would fall within taxable service. In view of the foregoing, it appears that the subject Service Tax Appeal filed by the appellant is not proper and legal and the same is prayed to be dismissed.

8. Having heard the rival contentions of the parties, perusing the entire records, we observe and hold as follows: -

8.1 In the present case, the demand for service tax amounting to Rs. 1795845/-along with interest and penalties for the period April 2014 to November 2015, has been confirmed based on the notification no. 13/2012 ST dated 20.06.2012. Foremost we have perused the said notification. It recites as follows:

In exercise of the said powers conferred by the Section 68(2) of the Finance Act, 1994 (as amended), the Notification No. 30/2012-ST dated 20.06.2012 (as amended from time to time) has been issued by the Central Government which has become effective w.e.f. 01.07.2012. Vide said notification, interalia, following service has been notified in respect of which a recipient of Service has to pay the applicable Service Tax.

"The taxable services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory."

8.2 The perusal makes it clear that this notification provides a mechanism for payment of service tax by the service recipient under reverse charge mechanism in case of the services of renting of a motor vehicle designed to carry passenger by the person as mentioned in the said notification. Perusal makes it clear that the notification applies if the service mentioned therein taxable. The defence of the appellant in present case is that the service received by the appellant is not taxable in terms of mega exemptions notification no. 25/2012 dated 20.06.2012 entry no. 23(b) thereof.

8.3 We have perused the said entry it reads as follows:

(A) Clause 23 of notification no 25 / 2012 dt 20.06.2012 as applicable during the period 01.07.2012 to 10.07.2014 exempted following services: -

23(b) Transport of passengers, with or without accompanied belongings, by -

(a) Air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim or Tripura or at Bagdogra located in West Bengal.

(b) A contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) Ropeway, cable car or aerial tramway;

8.4 We have also looked into the definition of contract carriage as given under section 2 (7) in The Motor Vehicles Act, 1988:

(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum –

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes –

(i) A maxicab; and

(ii) A motorcab notwithstanding the separate fares are charged for its passengers;

8.5 Reverting to the facts of the present case we observe that the appellant had entered into an agreement with various tour and travel agencies for providing buses to the appellants for transportation of their employees and the school going children as per their requirement on various routes on per day payment basis alongwith the payment of amount towards diesel and mobil oil consumed on actual basis. These facts when glanced through the definition of the contract carriage it becomes clear that the appellant entered into the contract for taking motor vehicles on hire for carrying passengers. Admittedly the appellant has not used the hired contract carriage / motor vehicle / bus for the purposes of tourism or conducted tour or charter. It becomes clear that the

activity of taking contract carriage / buses for transportation of school children / employee of the appellant on payment of per day charges alongwith the charges of diesel / mobil oil is an activity fully exempted from payment of tax in terms of notification no. 25/2012 dated 20.06.2013, entry no. 23(b).

8.6 The decision relied upon by the department in the case of **Anil Kumar Agnihotri vs. Commissioner of Central Excise Kanpur reported as 2018(10) GSTL 288 (All.)** is not applicable to the fact and circumstances of the present case: the activity in the present case not being rent a cab service. It is not even precisely, 'hire' due to terms and conditions of the agreement between the appellant with the tour operator. We rather draw our support from the decision of this tribunal, in the case of **M/s Rattanindia Power Ltd. vs. Commissioner of Custom, Central Excise and CGST Delhi reported as 2022 (65) GSTL 122 (Tri.-Del.)** It was held that for the period from 28.03.2014 till 10.07.2014 the activity was exempted through Clause 23(b) of Mega Exemption Notification No. 25/2012 dated 20.06.2012. From the record we further note that said Notification was amended through Notification No. 6/2014 dated 11.07.2014 wherein the said entry at Clause 23(b) has been amended and the said exemption was restricted only to non-air-conditioned vehicles.

8.7 We also observe that earlier also there had been previous notification as well as post one exempting the impugned activity from the payment of service tax as below: -

As regards the period April, 2000 to 23-12-2002. I find that notification No. 20/2009-S.T., dated 07.07.2009 was issued by the Government of India providing as under: -

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) hereinafter referred to as the Finance Act), the Central Government on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service referred to in sub-clause (n) of clause (105) of section 65 of the Finance Act, provided or to be provided to any person, by a tour operator having a contract carriage or tourist vehicle with a permit for inter-state or intrastate transportation of passengers, excluding tourism, conducted tours, charter or hire service, from whole of the service tax leviable thereon under Section 66 of the said Finance Act"

8.8 As is seen from the above notification, exemption was granted from the whole of the ST leviable under Section 65(105)(n), Finance Act, 1994 in respect of taxable services provided by a tour operators for entire interstate or intrastate transportation passengers Circular No. 334/13/2009-TRU, dated 6-7-2009 clarified the scope of said notification as under: -

"6.1 Private bus operators, who operate bus on specific interstate or intrastate routes, are required to pay service tax as they ply their buses having 'contract carriage permits' and thus fall within the definition of tour operators. On the other hand the State Undertakings run buses, which run on the same route carrying passengers, are not subjected to service tax as these buses bear 'stage carriage permit'. In order to bring parity between the two, the services provided by the tour operators undertaking point to point transportation of passengers in a vehicle bearing contract carriage permit is being fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tour or charter or hire Notification No. 20/2009-S.T., dated 7-7-2009 refers)".

8.9 In terms of the above clarification read with notification, services provided by the tour operators undertaken point to point transportation of the passengers in a vehicle bearing contract carriage permit is exempted from the Service tax. Vide Section 75 of the Finance Act, 2011, this Notification of 7th July, 2009 was given retrospective effect from the first day of April, 2000. The said Section 75 of the Finance Act, 2011 reads as under-

"75 Validation of exemption given to a person by tour operator having contract carriage permit for inter-State or Intra-State transportation of passengers with retrospective effect: -

(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 492(E) dated the 7th July, 2009 issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), granting exemption from the whole of service tax leviable under section 66 of that Act to any person by a tour operator having a contract carriage permit for inter-State or intra-State transportation of passengers. excluding tourism, conducted tour, charter or hire service, shall be deemed to have, and deemed always to have, for all purposes, validly come into force on and from the 1st day of April, 2000, at all material times.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected as if the notification referred to in sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994 (32 of 1994), an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President."

8.10 Thus, by virtue of Section 75 of the Finance Act, 2001 and in view of Notification No. 20/2009-S.T., dated 7th July, 2009, no Service tax is leviable in respect of the amount paid by the

appellants by carrying the passengers (Employees and Scholl Children) in contract carriage. Thus, even if it is assumed that service rendered by the appellant comes under the category of 'tour operator' in sub-clause (n) of clause (105) of the Finance Act, in any case, for the period from 1st April, 2000 onwards, no Service tax whatsoever can be demanded from the appellants. Consequently, no penalty can be imposed on them for the said period.

9. Finally it is observed that the findings in Impugned order regarding setting aside demand for extended period have attained finality. The department's appeal being withdrawn. The order confirming the demand for the normal period is hereby set aside in the light of entire above discussion. Consequently the appeal is hereby allowed.

[Order pronounced in the open court on **25.07.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)