

Usha Breco Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-04-2006

Reported in : (2007)8STT191

Judge : N T C.N.B., M Ravindran

Appellant : Usha Breco Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The temples of Maa Mansa Devi and Maa Chandi Devi are located on the hills around Hardwar. The abode of Lord Shiva is far away and above at Badrinath.
2. The appellant in the present case, operates several ropeways from Hardwar to both Mansa Devi and Chandi Devi temples. The boarding points for the two ropeways are located at a distance of about 4 kms. The pilgrims visit the temples by using ropeways. Appellant sells ropeway tickets for single journey to one temple or a combined ticket for journey to both the temples. A combined ticket includes the cost of road journey from one ropeway boarding point to the other rope-way boarding point. It is seen from a sample ticket that the charge for two ropeway rides is Rs. 109/- and charge for road transit is Rs. 26/-.
3. The road journey is provided in Maxi Cabs which satisfy the definition of 'tourist vehicle' under the Motor Vehicles Act. Under the impugned order, service tax has been demanded from the appellant in regard to the tours provided to the two

temples, treating the appellant as a "tour operator" in regard to the road transit between the two boarding platforms for the ropeways. It is not in dispute that the ropeway rides attract no service tax. Thus, the tax demand is on the basis that the 4 KM transit journey between the rope-way boarding points is a tour.

4. The contention of the learned Counsel for the appellant is that, in the instant case, the tour is from Hardwar to the temples in question and there is no tour between the two boarding points for the ropeways.

It is the submission of the learned Counsel that the expression, 'tour' has to be understood in its normal and natural meaning and that natural meaning is 'A lengthy trip or excursion, as for sightseeing or business'. It is being pointed out that road journey between the two rope-way boarding points is purely incidental to the tour to the temples.

5. He has also relied on the decision of this Tribunal in the case of Zee Telefilms Ltd. and Star India (P) Ltd. 2006 - TIOL - 945 (CESTAT-Mum) in support of the contention that definition in the statute should not be so understood as to destroy the normal meaning of the words used in the statute.

6. Learned SDR would contend that there is no substance in the appellant's contention inasmuch as Clause 112 defines 'tour' as 'a journey from one place to another irrespective of the distance between such places'. The submission is that the definition makes it clear that distance is altogether irrelevant for the purpose of levy. It is his contention that even though the road journey involved is about 4 km only, it is nonetheless a tour in the eye of the law. He also emphasises that the present case satisfies the other requirements in the statute like tour being in a tourist vehicle as well as tour being provided by a tour operator. He would also point out that deduction at 40% has been allowed while valuing the service, by applying Notification No. 39/97.

7. The levy for service tax is on service provided 'in relation to tour'. Therefore, the question to be asked is which is the tour in question. Undisputedly, the pilgrim's progress is from Hardwar to the temples in question. Therefore, if there is a tour, it is the pilgrimage to the two temples. There cannot be a tour between two boarding

points of a transport hub. The transit is merely incidental to the tour. The absurdity of the contrary view is clear upon applying it to everyday transit links between road and rail stations, domestic and international terminals of an airport etc. We do not see the statutory definition of 'tour' conferring an entirely artificial meaning on the commonly understood word, tour'. The words 'irrespective of distance' in the definition of tour only means there could be no argument that tour should be to a distant place. If distance is taken as a criterion, an intractable situation would arise, with by each person contending as to what should be the minimum distance. The law seeks only to remove such ambiguity. It does not give such an artificial meaning to the word 'tour' as to make any movement in a tourist bus a tour. To attract the levy, there must be a tour. In the present case, there is no doubt that there was a tour and that tour is the visit to the temples in question.

That is performed by not a tourist vehicle but in a ropeway Gondola.

The appellant is right in its contention that the road link between the two boarding points is only an incidental link and cannot displace the pilgrimage as the tour.

8. In the view we have taken above, in the present case, there is no tour in a tourist vehicle as contemplated in the statute so as to attract levy. Therefore the duty demand made under the impugned order is not sustainable. Penalty cannot find place when tax demand is not sustainable.

9. In the result, the impugned order is set aside and the appeals are allowed with consequential relief to the appellants.

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