

2012 (25) S.T.R. 49 (Tri. - Ahmd.)

IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD

[COURT NO. II]

Ms. Archana Wadhwa, Member (J) and Dr. P. Babu, Member (T)

LOK PRIYA TRAVELS

Versus

COMMISSIONER OF SERVICE TAX, AHMEDABAD

Final Order No. A/1406/2011-WZB/AHD, dated 12-8-2011 in Appeal No. ST/170/2009

REPRESENTED BY : None, for the Appellant.

Shri R.S. Sangia, SDR, for the Respondent.

[Order per : P. Babu, Member (T)]. - This is an appeal filed by M/s. Lok Priya Travels, providing "Rent-a-Cab Services" having valid service tax registration. They started their business in April 2000 and had entered into an agreement with Ahmedabad Municipal Corporation (AMC for short), for providing vehicles on hiring basis. However, they were not paying any service tax from the year 2000-01 to 2004-05. On adjudication, the original adjudicating authority confirmed the demand and ordered recovery of interest and imposed penalties under various provisions. On appeal, Commissioner (Appeal) upheld the impugned order against which the appellants have come to the Tribunal.

2. The prime issue to be decided in this **case** is, whether the appellants have rendered the services falling under 'Rent-a-Cab Service' or just giving their vehicles on hire basis. As per the definition "Rent-a-Cab" means any person engaged in the business of renting cabs. Needless to say that all services in relation to renting of cab by such person are taxable services.

3. The appellants entered into a contract under Resolution No. 221 dated 15-5-2000 of Standing Committee of the Ahmedabad Municipal Corporation. As per the annual contract for vehicles on rent, the main conditions were as under :-

- (i) Minimum Km. for 8, 12 and 16 hours shift shall be 2000 Kms, 2500 Kms and 3000 Kms respectively and for additional Km. Rs. 1.25 per Km. shall be paid and shall be calculated at the end of the month.
- (ii) Vehicle can be utilized for more than agreed hours and for such additional hour Rs. 4.50 per hour shall be paid.
- (iii) Weekly holiday will be as per convenience of Department officer.

These conditions take-away the sting out of the arguments by the appellants that the vehicles were provided on hourly basis. It is seen that the vehicles were provided on monthly basis in different shifts of 8/ 12/ 16 hours and limit of maximum kilometres per month as well as maximum hours per day was fixed. Only for the additional use of the vehicles, the appellants were to receive consideration either as per kilometres for additional kilometres or as per hourly basis for additional hours. Therefore, it is quite clear that the contract was not on hourly basis as confirmed by the contract which specifies that bill will be worked out on pro-rata basis as per the number of days the vehicle was actually used. The Commissioner (Appeals) in her order in appeal has observed as

follows :-

"9..... The judgments relied upon by the appellants in this regard are not applicable to the facts of the present case. The case of Kuldip Singh Gill can be distinguished in a manner that there the contractor was providing service only as and when required and was charging on per kilometre and there was fixed time frame. There was no guarantee for a minimum mileage for each vehicle per month or the minimum number of vehicles per month or for minimum turnover, whether daily, monthly or annually or during the duration of the contract. Whereas in the present case the contractual terms were quite different as conditions regarding time and mileage were clearly specified. The case of Dharmabhakti Travels is also not akin to the facts of the present case and therefore not applicable."

4. Therefore, we tend to agree with the contention of Commissioner (Appeal) and hold that the services provided by the appellants are rightly falling under the category of taxable service "Rent-a-Cab scheme operators".

5. It was also contended by the appellants that they were not aware that they had to pay service tax. Though it was a fact that they have taken service tax registration, they never disclosed the nature of services rendered nor they furnished ST-3 returns, which was mandatory for a person providing taxable services. The question naturally arises that if they were not aware that they had to pay service tax, why should they take a service tax registration. We are of the opinion that non-furnishing of information or non-filing of returns resulted in non-payment of service tax and this action on the part of appellants tantamounts to deliberate non-compliance with the provisions. In other words, this is only implying suppression of facts with an intent to evade payment of service tax. Therefore, the extended period, under Section 73(1) is rightly invoked by the Revenue.

6. On the basis of discussions and facts as above, we find that the order of Commissioner (Appeal) is legally correct and justified. Accordingly, the appeal filed by the appellants is rejected.

(Pronounced in the Court on 12-8-2011)
