Service tax on leased goods is valid

The taxable event for service tax is the act of providing service; ownership is not relevant

A recent judgment on service tax on tour operator has raised very interesting theoretical issues (S S Associates vs. CCE - 2013(31)STR433 (Tri.-Del)). The judgment holds that a ropeway operator is not liable to pay service tax under the heading Tour Operator defined under Section 65(105)(115) of the Finance Act 1994.

A ropeway operator is not a tour operator because he does not operate any tour, but has merely made the ropeway available for anybody to avail of it. I agree to this conclusion and do not agree with the dissenting view. Of course, the tour operator is giving a service, but he does not fall under the definition of tour operator.

In this treatise, I am discussing two theoretical issues raised in this case. The first one is about whether tax is leviable even if the property involved in giving service is on lease and does not belong to him.

The ropeway operator argued the point that the ropeway did not belong to him, but to the municipality that had given it to him on lease.

This argument has not been accepted by the Tribunal, which has held rightly that "for deciding tax liability, the title to the property is not relevant". The Tribunal has not quoted any judgment to support this view, which I am quoting now since I agree with this view of the Tribunal.

The basic concept of taxable event has to be understood in this context in the interest of clear thinking. Taxable event for import duty is the act of import, for excise duty, it is the act of manufacture and for sales tax, it is the act of sale, as has been enunciated as a basic principle by the Full Bench of the Supreme Court in a landmark judgment in 1963 in the case of Re: Sea Customs Act, 1878 reported in 1963 AIR SC 1760.

In the same vein, the taxable event for service tax is the act of providing service. Ownership is not relevant as has been held in several judgments by the Supreme Court. In Empire Industries vs. UOI - 1985(20)ELT179(SC), the Supreme Court held that "the fact that the petitioners are not the owners of the end-product, is irrelevant. The taxable event is manufacture, not ownership".

In the case of Ujagar Prints vs. UOI - 1988(38)ELT535(SC), the Supreme Court again held that the taxable event is independent of ownership of goods. In 1996 also, the same principle has been reiterated by the Supreme Court in the case of CCE vs. Khambatwala - 1996(84)ELT161(SC).

The next issue is about the interpretation of the word "tour operator" as defined in Section 65 (105)(115) read with 105(n). The dissenting judgment says that the tour

operator does not necessarily have to do planning, scheduling, organising or arranging tours.

It says that the definition also includes any person engaged in the business of operating tours. But the dissenting judgment forgets to mention that the complete expression is "operating tours in a tourist vehicle". So the operating tour is limited only to those who give on hire tourist vehicle and not any tour operator. That is to say, that tour operator has to either do planning, scheduling, organising etc. of tour or operate tour in a tourist vehicle in order to fall in the definition of tour operator.

The dissenting judgment is also wrong from another point of view. It says that since subsection 105(n) defines taxable service as any service provided by a tour operator, it means any tour operator without any specific function necessary to be done by him. This interpretation given in the dissenting judgment is wrong. Subsection 105(n) has been for the expression tour operator. And tour operator has been defined separately under (115) which attaches certain specific functions necessary to be defined as a tour operator.

Therefore, we have to understand a tour operator not just as an operator, but as an operator as defined in (105). This principle is known as Generalia Specialibus. When there is a special definition, the general definition is ousted.

The conclusion is that the ropeway operator is not to pay service tax as tour operator under Section 65(105)(115). But under the comprehensive service tax system, which is now prevalent, he has to pay service tax.

(Business Standard)