

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

(1) SERVICE TAX APPEAL No. 51443 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Amber Travel Services **...Appellant**

Versus

Commissioner, **....Respondent**
Central GST & Central Excise, Jaipur

WITH

(2) SERVICE TAX APPEAL No. 51463 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Amber Travel Services **...Appellant**

Versus

Commissioner, **....Respondent**
Central GST & Central Excise, Jaipur

WITH

(3) SERVICE TAX APPEAL No. 51464 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Nisha Tours and Travels **...Appellant**

Versus

Commissioner, **....Respondent**
Central GST & Central Excise, Jaipur

WITH

(4) SERVICE TAX APPEAL No. 51468 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Nisha Tours and Travels **...Appellant**

Versus

**Commissioner,
Central GST & Central Excise, Jaipur**

....Respondent

WITH

(5) SERVICE TAX APPEAL No. 51469 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Samrat Tours and Travels

...Appellant

Versus

**Commissioner,
Central GST & Central Excise, Jaipur**

....Respondent

WITH

(6) SERVICE TAX APPEAL No. 51470 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Samrat Tours and Travels

...Appellant

Versus

**Commissioner,
Central GST & Central Excise, Jaipur**

....Respondent

(7) SERVICE TAX APPEAL No. 51471 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Samrat Tours and Travels

...Appellant

Versus

**Commissioner,
Central GST & Central Excise, Jaipur**

....Respondent

WITH

(8) SERVICE TAX APPEAL No. 51472 of 2018 [DB]

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Nisha Tours and Travels

...Appellant

Versus**Commissioner,
Central GST & Central Excise, Jaipur****....Respondent****AND****(9) SERVICE TAX APPEAL No. 51628 of 2018 [DB]**

[Arising out of Order in Appeal No. 144-152 (SM) ST/JPR/2018 dated 01.03.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Amber Travel Services**...Appellant****Versus****Commissioner,
Central GST & Central Excise, Jaipur****....Respondent****APPEARANCE:**

Mr. Rahul Lakhwani, Advocate for the appellants

Mr.S.K. Meena, 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/ Decision: **10/07/2023****FINAL ORDER No. 50986-50994/2023****DR.RACHNA GUPTA**

Present order disposes of 9 appeals, order in appeal being common to all of them. However, there have been 3 different Order in Originals as follows:-

Sl. No.	Name of Assessee	O-I-O No.	Date
1.	Amber Travel Services (3 Appeals)	71-72-73 (ST) JP 2016-17	31.08.2016
2.	Smart Tours and Travels (3 Appeals)	68-69-70 (ST) JP 2016-17	-do-
3.	Nisha Tour and Travels (3 Appeals)	74-75-76 (ST) JP 2016-17	-do-

2. The period involved in all these appeals is with effect from 2011-12 to 2014-15 i.e. pre as well as post negative list. The brief facts are that the appellants are engaged in providing the services of tour operators and air ticket agents. They were also providing packaged tour operator services by way of conducting packaged tours for Hajj/ Umrah pilgrims to Mecca-Madina at Saudi Arabia. Based on an intelligence, it was observed that the appellants have not obtained the service tax registrations and have failed to declare their taxable receipts to the service tax Department. Accordingly, vide several Show Cause Notices dated as mentioned below:

Name of appellant	Show Cause Notice date
Amber Travel Services	29.08.2014
Amber Travel Services	31.12.2015
Amber Travel Services	02.03.2015
Samrat Tours and Travels	30.03.2016
Samrat Tours and Travels	28.08.2014
Samrat Tours and Travels	02.03.2015
Nisha Tour and Travels	02.03.2015
Nisha Tour and Travels	29.08.2014
Nisha Tour and Travels	31.12.2015

the duty demand was raised alongwith the proposal of recovery of interest and the imposition of penalty. Both the authorities below have confirmed the said proposal. Being aggrieved, the appellants are before us.

3. Learned Counsel for the appellant has mentioned that no service tax is applicable on inbound tours carried by the

appellant. The issue is no more *res-integra* as stands decided by this Tribunal in the case of **Cox and Kings India Limited vs. CST, New Delhi reported in 2014 (35) STR 817 (Trib-Delhi)**.

It is further submitted that place of provision for the service herein i.e. the tour for Hajj to Mecca is outside the taxable territory. As per the Rules of place of provision there arises no service tax liability. Ld. Counsel has impressed upon the exemption notification No. 25/2012 submitting that Entry 5 B of said Mega Notification exempts the services provided by a person by way of conduct of religious ceremony, the payment of service charges is also exempted for such services. The Board Circular dated 30.10.2009 is also relied upon under which the service tax is not changeable on the services provided in respect of tour undertaken for the Hajj Pilgrims. With respect to the period post negative list the amendments in the rules of place of provision of service in the year 2012 have been impressed upon, submitting that the services were still not made taxable. The demand is alleged to have wrongly been confirmed. For these reasons there is no reason for imposition of penalty. The extended period is also alleged to have wrongly been invoked for want of any *mens rea* with the appellant to evade tax. The order accordingly is prayed to be set aside and appeal is prayed to be allowed with the relief of cum-tax benefit as well.

4. While rebutting these submissions, Id. DR has conceded about the decision with respect to outbound tours for the services provided and consumed beyond the Indian territory in favour

of assessee. However, has submitted that tour operator service is otherwise a taxable service in terms of section 65 (105) (n) of Finance Act, 1994, even post negative list period the said service not covered under negative list of section 66 D of Finance Act 1994. The service has to be considered as taxable service. It is impressed upon that as per the place of provision of service rules 2012, it shall be the location of the recipient of service. In the present case, the recipients are located in India within the taxable territory, hence, the services provided are taxable. Entry 5A in the Mega Notification as inserted vide Notification No.14/2014 dated 20.08.2014 is relied upon under which the services provided by the, a private package tour operator are taxable. The benefit of Board Circular is also denied on the ground that the appellant has received the amount of consideration in Indian currency as contrary to convertible foreign currency. With these submissions and impressing upon the correctness of the order under challenge, the appeal is prayed to be dismissed.

5. Having heard the rival contentions, we observe that the short issue involved in the present appeal is to whether the appellant, a tour operator, is liable to pay service tax in respect of outbound tours for performing Hajj/ Umrah. It is already conceded that the issue stands decided in favour of the appellant by virtue of **Cox and Kings India Limited (supra)**. We observe that the decision in the case of **Atlas Tours and Travels Pvt. Ltd. vs. Commissioner of Service tax in Appeal No. 86263, 86264, 86265 of 2013 dated 5th January, 2015**

is specifically about the liability of tour operators with respect to outbound Tours of Hajj- Umrah to Mecca and Madina. The issue has been decided in favour of the service provider relying upon **M/s. Cox and King India Limited (supra)** only. We also observe that the Departmental appeal against the said order has been dismissed by Hon'ble Apex Court in **Civil Appeal of 2016 vide order dated 29th January, 2016**. Thus, the impugned issue is observed to have attained finality. This Tribunal recently also vide **Final Order No.A/50942-50943/2022 in Service Tax Appeal No.50671 and 51112 of 2014** vide **Order dated 30th September 2022** held that service tax is a destination based tax and provisions of the act do not have an extra territorial operation, it will only be leviable on services provided and consumed within the country. It was also held that the assumption that the payment was received in local currency from Indian tourists is not evidenced by any detail in the Show Cause Notice or subsequent ascertainment. Hence while relying upon **Cox and King India Limited (supra)** itself, the decision was given in favour of the service provider.

6. Also in addition, the location where services are to be provided has to be determined on the basis of place of provision of service rules, 2012. As per Rule 4 of the POPS rule the place of provision for performance-based services shall be the location where the services are actually performed. Alternatively, according to Rule 6, place of provision for cultural, artistic event shall be the place where it is actually held. As the services by way

of admission in Hajj event is provided in Saudi Arabia it cannot be considered taxable in India.

7. We further observe that alternatively, under entry 5b of the mega notification No. 25/2012 Services provided by a person by way of conduct of religious ceremony are also exempted from paying service charge. In the present case the services provided by the appellant are in accordance to the Hajj policy of the government is considered as religious ceremony. The appellant itself conducts the whole tour and ceremony thus exempted through 5b of the notification from paying service charge. Further we observe that no service tax is chargeable on impugned tour service in light of Board circular No. 117/11/2009-ST dated 30.10.2009. That service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Hajj pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service.

8. For the post negative list period also we observe that the Place of Provision of Service Rules are same. We observe that the amendment in Mega Notification after coming of negative list also supports the appellants' case. This entry still exempts the services by the specified organization in respect of a religious pilgrimage has facilitated by Ministry of External Affairs of Government of India. There is no denial to the fact that the Ministry of External Affairs only allots 30% of its Hajj pilgrimage

quota to the appellants. Thus, seen from this angle as well, we hold that services in question are exempted from the tax liability.

9. In view of this observation it also becomes clear that the non-registration of the appellant was due to its *bonafide* belief for the impugned activity/ service to not to be taxable. Question of imposition of penalty doesn't at all arise. We rather consider it as a reasonable explanation and thus invoke section 80 of the Central Excise Act while setting aside the order of imposition of penalty upon the appellants. In view of the entire above discussion the order under challenge is hereby set aside. Appeal stands allowed with the consequential benefits including that of cum-tax benefit.

[Operative part of the order pronounced in the open Court]

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)

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

Anita