CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 87868 of 2013

[Arising out of Order-in-Original No. 01/ST/HAB/13-14 dated 23.04.2013 passed by the Commissioner of Service Tax (Adjudication), Mumbai.]

Heena Tours & Travels **.... Appellant**
G-1, Hemu Plaza
28, D.J. Road, Vile Parle (West)
Mumbai – 400 056.

VERSUS

Commissioner of CGST & Central Excise **.... Respondent**
Mumbai South Commissionerate
13th Floor, Air India Building,
Marine Drive
Nariman Point, Mumbai – 400 021.

Appearance:

Shri S.S. Gupta, Chartered Accountant for the Appellant

Ms. S. Varalakshmi, Authorized Representative for the Respondent

AND

SERVICE TAX APPEAL No. 88604 of 2013

[Arising out of Order-in-Original No. 01/ST/HAB/13-14 dated 23.04.2013 passed by the Commissioner of Service Tax (Adjudication), Mumbai.]

Commissioner of CGST & Central Excise **.... Appellant**
Mumbai South Commissionerate
13th Floor, Air India Building,
Marine Drive
Nariman Point, Mumbai – 400 021.

VERSUS

Heena Tours & Travels **.... Respondent**
G-1, Hemu Plaza
28, D.J. Road, Vile Parle (West)
Mumbai – 400 056.

Appearance:

Ms. S. Varalakshmi, Authorized Representative for the Appellant

Shri S.S. Gupta, Chartered Accountant for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85743-85744/2026

Date of Hearing: 27.02.2026

Date of Decision: 15.06.2026

PER: M.M. PARTHIBAN

This appeal being No. ST/87863/2013 has been filed by M/s Heena Tours & Travels, Mumbai (herein after, referred to as 'the appellant'), assailing Order-in-Original No. 01/ST/HAB/13-14 dated 23.04.2013 (herein after, referred to as 'the impugned order') passed by the Commissioner of Service Tax (Adjudication), Mumbai.

1.2 Revenue has also filed appeal being No. ST/86604/2013 against the impugned order, in pursuance of the decision taken by the Committee of Chief Commissioners of Central Excise, Mumbai Zone-I and Mumbai Zone-II vide Order No. 28/Review/CCO-I/MCX/2013 dated 23.08.2013. The grounds urged in the appeal filed by Revenue include the point that it has left out the service tax demand for the period April, 2005 to September, 2005 and has not confirmed service tax demands for the period October, 2005 to November, 2007 by invoking the extended period of limitation under the proviso to section 73(1) of the Finance Act, 1994 and for non-imposition of consequent penalties on the appellant.

1.3 Central Board of Indirect Taxes & Customs (CBIC), Ministry of Finance have issued Notification No. 02/2017-Central Tax dated 19.06.2017, as amended. Vide this notification dated 19.06.2017, CBIC have prescribed the territorial jurisdiction of the Principal Commissioners/Commissioners of Central Goods and Service Tax & Central Excise for various Commissionerates across the country in exercise of the powers vested read with it under Sections 3 and 5 of the Central Goods and Services Tax Act, 2017 read with Section 139 ibid. As per the said notification dated 19.06.2017, each of the Commissionerate is provided with specific jurisdiction, which *inter alia* contain particular Pin code numbers for the areas covered and tax payers falling under such area, who are governed under the existing laws of Central Excise Act, 1944; Chapter V of the Finance Act, 1994. Therefore, considering the aforesaid legal provision and that the

appellant is presently functioning under the jurisdiction of the Central Goods and Service Tax authorities in Mumbai South Commissionerate, the revised name and address of the respondent/appellant department has been suitably incorporated. The Registry is also directed to incorporate the following changed name and address of the respondent/appellant department in the appeal records for the purpose of disposal of the appeal:-

> *"Commissioner of Central Goods Service Tax & Central Excise,*
> *Mumbai South Commissionerate,*
> *13th Floor, Air India Building, Marine Drive*
> *Nariman Point, Mumbai – 400 021".*

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant M/s Heena Tours & Travels, Mumbai *inter alia*, is engaged in providing services under the category of Tour Operator services and for the purpose of payment of service tax and for compliance with service tax statute, they are registered with jurisdictional Service Tax Commissionerate, Mumbai-II holding Service Tax Registration No. AAAFH1341MST001.

2.3 During the course of audit of the records of the appellant, the department had noticed that the appellant had not paid service tax on the gross amount received towards rendering of 'tour operator services' provided in connection with tours to Jammu & Kashmir (J&K). Therefore, the department had sought for complete details with respect to the said tour operator services provided by the appellant. Upon scrutinising the details submitted by the said appellant including ST-3 returns, the department had interpreted that for the total receipts with respect to 'tour conducted in relation to J&K' of Rs.11, 61,08,036/- for the period October, 2005 to September, 2010, the appellant had not paid the service tax due of Rs.1,28,42,071/- and therefore issued SCN dated 18.04.2011 proposing for the following actions:

(i) Service tax amounting to Rs. 1,28,42,071/- should not be demanded and recovered from the appellant under Section 73(1) of the Finance Act, 1994;

(ii) interest at appropriate rate should not be demanded and recovered from the appellant under Section 75 of the said Act of 1994;

(iii) Penalty under Section 76,77 and 78 of the Act of 1994 should not be imposed for various omissions on the part of the appellant and under Rule 7C of the Service Tax Rules, 1994 for the failure to file proper and correct returns.

2.4 The said SCN dated 18.04.2011 was adjudicated by the learned Commissioner vide impugned order dated 23.04.2013 in confirmation of the service tax demand only for the normal period covering from October, 2009 to September, 2010 by dropping the service tax demand for extended period. Further, he did not impose any penalty on the appellant under Section 76, 77 and 78 ibid. Feeling aggrieved with the impugned order, both the appellant and Revenue have filed these appeals before the Tribunal.

3.1 Learned Advocate for the appellant submitted that they organize pre-planned package tours. In other words, the appellant schedules a tour based on their understanding, costing, travel seasons, availability of flights, hotels etc. and prepares a "pre-planned package tour" to be offered to the customer for sale. Some customers come in groups and they want a tailor made program of package tour by specifically mentioning location, preference of food, hotel for stay etc. and seek the appellant to prepare a package tour for travel in J&K. In case of both category of tour packages to J&K, tour would commence, be wholly performed and terminate in J&K. He further stated that the appellant has been paying service tax under the taxable category "Tour Operator" in respect of domestic tours and was not paying service tax on tour in J&K, as they were of the understanding that the tour is in J&K, which is outside the scope of service tax statute.

3.2 Learned Advocate submitted that the Tribunal while considering their request for waiver of pre-deposit and stay application in this case had considered that the tour is Ex. Srinagar and the activity of tour is undertaken in Srinagar and the provisions of the Finance Act, 1994 are not applicable to Jammu & Kashmir, for waiver of the pre-deposit and had granted stay to the appellant. Further, in another case of *Heena Tours & Travels and Heena Enterprises Vs. Commissioner of Central Excise & Service Tax, Surat-I* – 2024 (9) TMI 1252, the issue under

dispute has been addressed by the Co-ordinate Bench of this Tribunal at Ahmedabad by allowing the case on the issue of limitation and by remanding the case to the original authority, for determination of duty liability for the normal period holding that the activity of planning, scheduling, organizing and arranging of tour in J&K is provided in the taxable territory. However, on this the learned Advocate has pleaded that since the said decision is factually as well as legally incorrect the same shall not be applied to their case in dispute. In support of their plea they had relied upon the CBIC Circular No. 111/5/2009-S.T. dated 24.02.2009 to state that the taxability of services would be based on the place of performance. Further, he also stated that since the word 'taxable territory' was introduced in Section 66B ibid from 01.07.2012, the same is not relevant for the present dispute relating to period from October, 2005 to September, 2010. Furthermore, he stated that the manner of determining place of provision of specific activity in J&K has not been decided by the Larger Bench in the case of Cox & Kings Limited in the interim order dated 19.10.2023.

3.3 In addition to the above, learned Advocate also submitted that in terms of Rule 3(ii) of Export of Service Rules, 2005 even if part of the services performed outside India will be treated as export of service. Further, he claimed that service tax is a destination based consumption tax for which the place of provision of service has to be determined for levy of tax on the same. In the absence of machinery provision for collection of tax for services provided in J&K and by considering the nature of tour operator service, he pleaded that the services provided by the appellant completed at the place where it is provided i.e., in J&K being outside the purview of the Finance Act, 1994, no service tax is liable to be paid by the appellant. Thus, he submitted that on the above basis, the appeal preferred by them be allowed.

4. Learned Authorized Representative (AR) had submitted that nature of services provided by the appellant fall under the definition of 'tour operator service' under Section 65(115) of the Finance Act, 1994. Further, since the consideration for the service was received in Indian Rupees, he stated that it cannot qualify as export under Export of Service Rules, 2005. He reiterated the stand of Revenue that in the

impugned order, the learned Commissioner had mistakenly failed to impose the service tax for the entire period of demand by invoking the extended period and had not imposed penalty under Section 76, 77 & 78 ibid.

5. Heard both sides and perused the case records. The additional submissions made in the form written paper books in this case was also perused carefully.

6.1 The learned Commissioner had confirmed the adjudged demands of service tax on the appellant vide impugned order dated 23.04.2013, on the basis of his conclusion that the appellant have failed to assess and pay service tax on tours to J&K for the normal period, and by dropping the demand for extended period since there is no material and evidence whatsoever is produced on record to sustain the serious and blatant allegation of 'suppression of facts with the intention to evade payment of service tax'.

6.2 The relevant findings and conclusions arrived in passing such an order are extracted and given below:

"29. The short issues required for determination in the instant case, to my mind, having a direct and essential bearing on the outcome of the SCN, are whether – (1) they (Noticee) are liable towards the said ST (inclusive of the EC and the SHEC) demanded from them under the taxable category of TOS on the ground that it has been not rendered in J&K State; (2) the proposed demand of ST made for the extended period, i.e., on limitation aspect, is correct and proper; (3) the demand made in the SCN is correct and proper in not considering the requirement of taking and applying the rate of ST (applicable) on half-yearly basis instead of on monthly basis, for reckoning and working out the said demand; (4) the SCN is correct and proper in not considering the gross value (amount) of the taxable value received by them for the services rendered under TOS, which is the basis for charging ST thereon, as (being) inclusive of the ST element (therein), in order to duly reckon and determine their actual liability to ST; and, (5) they are liable for the proposed imposition of The FA-94 penalty on them, for violating various provisions of the FA-94 and/or the STR, under Sections 76, 77 and 78 of the FA-94; or otherwise.

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34. I now take up the issue of whether the said service rendered in J&K by them (Noticee) here, is liable to ST or not. Essentially that as ST is a destination-based consumption tax rendered by them in J&K State (and not in Mumbai), is hence not liable to ST in terms of section 64(1) of the FA-94……

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36.1 I now consider the various other submission, above, made by them (Noticee), item-wise. (1) As urged above, that demand is raised on the basis that the service flows in India in case of services provided by a tour operator located outside J&K to a person who is also located outside J&K, that (allegedly) as the service flows outside J&K, therefore ST is chargeable; (and) without however, considering the fact that the services are consumed in the state of J&K. SCN is not tenable. This matter falls in a narrow compass of determination. Briefly, I find that, as discussed at length foregoing and righty urged by them, that ST being a destination-based consumption tax, the same has to be levied necessarily at the place where the services are consumed - accordingly, this allegation is made contrary to the provisions of section 64(1) of FA-94. Hence, not tenable.

37. The issue for determination would appear to go in favour of the Noticee, as discussed at length, foregoing. I also find that the ratio of International Travel House Ltd. vs. CST [2011(22)STR629(Tri.)] would not also be applicable to this case, being clearly distinguishable on facts (outbound tour, i.e., outside India, there vis-à-vis domestic tour, i.e.. within India but made in J&K State, here). Outbound tour is not the same as nor co-extensive with tour made to J&K State. However, there is a fundamental and critical catch, here, which The CBEC has issued goes to the root of the issue involved in the instant case. instructions/guidelines on various issues for its subordinate officers to follow and implement in such matters. The instruction (one such) on the instant subject is contained in the ST Commissionerate, Delhi, communication (probably, Trade Notice) dated 26-11-07 on the Subject: "Service tax chargeable, if the service provider and service receiver both located outside Jammu and Kashmir". It reads as follows:

"The doubt was raised if the services provided by a Delhi based company for conduction of topographical survey work of project area in Jammu and Kashmir is chargeable to Service Tax, if the contract for the construction of the project in the state of J&K was awarded to Mumbai based company.

It was clarified by the Board in consultation of the Ministry of Law that even if the object of service is in the state of J&K but as the service provider and the service receiver are outside the State of J&K the Service Tax shall be chargeable from the service provider". (Emphasized).

The CBEC's directions being alive and final, hence, irrespective of the weighty submission of the Noticee, on merit otherwise, the case has to be decided by upholding the said allegation, for the said part-period only. It cannot be otherwise.

38. ………..Hence, I uphold their (Noticee's) liability towards the said ST (inclusive of the EC and the SHEC) demanded from them under the taxable category of TOS as per the SCN, w.e.f. 26-11-07 upto September'10, on the ground that they have not rendered the same in J&K State, accordingly. The Table in Para 6 of the SCN refers, here. Hence, in any case, no ST liability whatsoever can accrue and be fastened on them from (period) Oct.'05 upto (including) Sept.'07, as shown in first four rows (serial number is left unnumbered and not recorded in the SCN) thereof, involving tax implication ("Payable") amounting thereby to the total sum of Rs.55,07,867/- only out of the total ST demand of Rs.1,28,42,071/- only; in other words, the balance sum of Rs.73,34,204/- only would be due and liable to be paid by them. Of

course, this is subject to the outcome on merit, of the other concomitant issues at '(2)', '(3)' and '(4)' above, set for determination in this case, by this Authority, as would be so evident, in this Order, later. The issue set for determination at '(1)' above, thus stands decided accordingly.

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43. As discussed above, merely making allegation to invoke applicability of the extended period in the SCN in the light of the said above weighty judgments of the Hon. Courts (also), is not sufficient and proper in order to invoke the extended period; inter alia particularly as the critical elements essential for such invocation are absent and not applicable, as per the record of the SCN; such as, that the mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty; suppression means failure to disclose full information with intent to evade payment of duty; that an incorrect statement cannot be equated with a wilful mis-statement; that there cannot be suppression of facts which is not wilful and yet constitute a permissible ground for purpose of proviso to section 73(1); that even if (assuming for argument) the Noticee were not responding to the department's request, for which no action for non-compliance was taken, even in such eventuality, they are not guilty of any wilful suppression; that extended period is inapplicable for mere failure or negligence of the Noticee to file the return in the specific matter desired by the department (including certain elements, etc.) or to pay ST when there was scope for doubt that it is not necessary based on the Noticee's bonafide belief to this effect; that something positive other than mere inaction or failure, at best, on the part of Noticee is not proved; that conscious or deliberate withholding of information by the Noticee is necessary; that the Noticee had reasonable belief that they were not required to give the particular information or that they were required or not required to carry out such action or inaction, as alleged by the department. It is evident that no material and evidence whatsoever is also produced on record to sustain such serious and blatant allegation of "suppression of facts (made with the) intention to evade payment of ST." Moreover, the strict burden of proof has not also been discharged or shifted by the department, as is essential. Further, 1 find on examination of the record that there is also no independent examination, no logical discussion, no reasoning brought on record, to justify the sweeping conclusion reached in the SCN to invoke the extended period, in the given facts and circumstances of the case. The allegation is made on arbitrary basis. The Hon. Courts have repeatedly frowned on any such generalization, subjective observations, and attempt to conveniently foist the blame entirely on the opposite party, particularly as there is no explanation for such lapse and delay in the issue of the SCN, as is plainly apparent in this case, and particularly as the Noticee here entertained reasonable and honest belief regarding the propriety and correctness of their actions, which cannot be faulted, in any manner, in the given circumstances (above-cited case law, refer). Hence, there can be no ST liability on them for the extended period. ST liability would be confined and restricted to the normal period of one year alone. The Table in Para 6 of the SCN refers, here (serial number and row number is left unnumbered and not recorded in the SCN, for reference). Accordingly, in terms of section of section 73(1) read with section 73(6) of the FA-94, the SCN (dated 18-04-11) would hence at best cover the (period) Oct. '09 upto (including) Sept. 10 only, as shown in the last two rows (serial number not recorded in the SCN) thereof, involving tax implication ("Payable") amounting thereby of the total sum of Rs.25,35,518/- only out

of the total ST demand of Rs.1,28,42,071/- only; in other words, the balance sum of Rs.1,03,06,553/- only would not be so due and liable to be paid by them. Hence, the SCN fails on the ground of limitation independently, in part. Of course, this is subject to the outcome on merit, of the other concomitant issues at '(3)' and '(4)' above, set for determination in this case, by this Authority, as would be so evident, in this Order, later. The issue set for determination at '(2)' above, thus stands decided accordingly.

44. The next issue for determination at '(3)' above whether the demand made in the SCN is correct and proper in not considering the essential requirement of taking and applying the rate of ST (applicable) on half-yearly basis instead of on monthly basis, for reckoning and working out the said demand or otherwise, is taken up. Their (Noticee's) submission (without prejudice) is recorded at length in Paras 20.-20.2, above; hence, not recorded here for brevity. Such determination would fall in a narrow compass in the given facts and circumstances obtaining in the instant case. Briefly, the amount of ST demanded for its non-/short-payment has to be worked out on the basis of the taxable amount received by them on a half-yearly basis (April-Sept. and Oct. – March of the Financial Year concerned), as is clear and obvious, in terms of the returns to be filed for showing such payment, in terms of rule 7 of the STR read with section 70 of the FA 94. The Table in Para 6 of the SCN refers, here. The relevant column (serial Number is left unnumbered and not recorded in the SCN for reference) therein titled "STA", refers. Only one single (fixed) rate is shown against each serial number of the corresponding row, e.g., for the "Period" (of) "April to September'07". They have forcefully submitted inter alia here, that thought during the period of dispute (Oct. '05 Sept. '10) that though there have been changes in the rate of ST. however, that (only) one (fixed) rate has been considered and applied for the entire half-year period, i.e. on half-yearly basis instead of on monthly basis. This submission is found to correct to be correct and proper. It is necessary to consider the rate applicable on monthly basis considering the requirement to pay ST on monthly basis, in terms of rule 6 of the STR read with section 68 of the FA-94. One illustration here will suffice. The rate of ST was 12.24% upto 11-05-07: w.e.f. 11-05-07, it was changed to 12.36%; (this was further changed to 10.3% w.e.f. 24-02-09) - however, the demand for the said half-year (April 07-Sept. 07 has been shown and egregiously and improperly raised @12.36%. Urged further that accordingly, the ST shall be payable @12.24% for the amount collected in April'07 which is Rs.1,75,40,885/- only. Similarly, the rate from 24-02-09 being 10.3%, the demand has been thus computed @12.36% upto March'09; thereby egregiously and improperly working out the ST demand for this six-month concerned period at Rs.7,07,757/- only considering the applicable rate 12.36% instead of duly considering the amount collected in March'09 being Rs.1,13,70,000/-, on which ST @10.3% shall be chargeable and ST payable accordingly. The lapse and error in working out and computing the due ST amount payable, on merit, as discussed, is hence clear and evident in the SCN. The non-application of mind of the author of the SCN is evident. Prima facie it is found to be correct and acceptable in principle. However, I find that on facts, they (Noticee) have not submitted any material and evidence to support and sustain their submission, which cannot be decided on the basis of legal principle alone, bereft of the details of the taxable value, corresponding bills, etc. and the returns filed by them during this entire period. It is clear that they have supplied the "Details of Value of Tour to J&K" statement (record) to the department (ACST) dated 21-02-11 which forms the basis for working out

the details of the "Gross Value Received" shown in the Table in the SCN; moreover, the said letter is unqualified and clear and is a relied-upon document. It cannot be ignored/disregarded. There is no other material available on record/discernible to substantiate the said facts and attendant details. Hence, in such background and circumstances, being unsubstantiated on essential facts and not supported by corroborate material containing the necessary details, the submission made in defence, cannot be duly considered by this Authority, on this basis alone. It fails. The issue set for determination at '(3)' above, thus stands decided accordingly….

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46.2 Accordingly, in the light of the above discussion, taking into consideration the recorded figures shown in the Table in Para 6 of the SCN under the column titled "ST Payable", as being cum-ST, as discussed foregoing, the resultant work-out and computation of the ST actually payable, under section 67(2) of the FA-94, reckoned on the basis of applied "back calculation" methodology, is determined to be the following, as per the Table (last column therein), below.

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Accordingly, the total demand works out to the (lower) sum of Rs.1,15,08,800/- only, reckoned in this manner, at best, subject to merit and limitation factors, as held above, and not the recorded larger sum of RS. 1,28,42,071/- only, as is egregiously and improperly made in the SCN. However, as held foregoing by this Authority, the demand of ST can sustain only for the total limited period of Oct.'09-Sept.' 10, comprising and covering the said two six-monthly periods shown i.e., the ST shown in the last column of the above Table, (heading) titled :Due ST Payable", being proper and legal (involving the sums of ST of Rs. 13,36,176/- only and Rs.9,62,571/- only) for this period, totalling the sum of Rs. 2,98,747/- only. The remaining huge sum of ST is not due and recoverable being apparently irretrievably lost, on limitation, as discussed above, with attendant consequence. The issue for determination at '(4)' above, thus stands decided accordingly.

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53.3 The essential basis for imposition of such penalty is only if an assessee (Noticee) is found guilty of incriminating circumstances (incident) which is covered under the exceptional and category of cases for invoking penalty, i.e., in the type of cases where the proviso to sub-section(1) of section 73 of FA-94 is invokable, in circumstances, i.e. where any ST has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of (a) fraud; or (b) collusion; or (c) willful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of the FA-94 or of the STR with intent to evade payment of ST by the person chargeable with the ST or his agent. This is irrespective of the period involved for such alleged contravention. It has been held above that the allegation made of suppression of facts with the intent to evade the payment of duty by them, is plainly egregious, improper, and bogus without any leg to stand on. In such binding circumstances, the question of imposition of such penalty thus cannot arise.

53.4 Moreover, as rightly urged also, it has been mandated in the fifth proviso (above) to this section as follows: "Provided also that if the penalty is payable under this section, the provisions of section 76 shall not apply". This will apply w.e.f. 10-05-08. The SCN covers period prior to this and

subsequent to this also. In any case, no ST is due and payable by them for the period of May'08 or prior to this period, as held foregoing. Furthermore, even assuming for the sake of argument alone, without prejudice, that any penalty is imposable, I hold that the same is liable to be waived in terms of section 80, on the ground that it stands established by them that there exists reasonable cause for the said failure, on the basis and reasons, as recorded at length, in Paras 48., 49.2, 50.1, 50.2, 50.3, 51.1 and 51.2, above, and made applicable here mutatis mutandis. Section 78 penalty cannot stand scrutiny hence. Held accordingly. The issue for determination at '(5)' above, thus stands decided accordingly.

54. The SCN is liable to be upheld, in part, and also liable to be dropped, in part, as discussed, foregoing. Accordingly, I pass the following order disposing of the same.

55. In view of the foregoing discussion, -

(1) I confirm, in terms of section 73(2) of the FA-94, the demand of ST (including EC and SHEC) of Rs. 22,98,747/- (Twenty-two lakh ninety-eight thousand seven hundred and forty-seven) only, in terms of the SCN, under Section 73(1) as payable by / recoverable from the Noticee;

(2) I order recovery of interested due on the delayed payment of ST at the appropriate rate(s), on the amount confirmed at (1) above, from the due date(s) under the provisions of Section 75 of the FA-94 from the Noticee;

(3) I do not impose any penalty under Sections 76, 77 and 78 of the FA-94 on the Noticee."

7. The short issues for determination before the Tribunal is the following:

(i) whether the appellant is liable to pay service tax for an amount of Rs.1,28,42,071/- on the "tour operator" service provided in J&K for the period 01.10.2005 to 30.09.2010, in terms of the Finance Act, 1994?

(ii) whether the impugned order dated 23.04.2013, demanding service tax of Rs.22,98,747/- for the period October, 2009 to September, 2010 as determined by the learned Commissioner under Section 73 of the Finance Act, 1994 is correct or not, in terms of the facts of present case?

(iii) Whether the appellant is liable for penalty or not?

The disputed period in this case as per the SCN relates to April, 2005/01.10.2005 to 30.09.2010.

8.1 For deciding on the disputed issue at paragraph 7(i) above, we find that the legal provisions as contained in the Chapter V of the Finance Act, 1994 at different period of time specifying the taxability of services are relevant. The basic provisions for levy or charge of service tax; the extent, commencement and application of such levy on the taxable services and the list of activities or services which would come under the scope of 'taxable service' by enumerating specific activities or services, *inter-alia*, relevant phrases by way of definition have been provided under Sections 66, 64 and 65(105), 65(113), 65(115)/65(48), 65(50), 65(52)/ 65(41), 65(43), 65(44) of the Finance Act, 1994. The levy of service tax on the services provided by a 'tour operator' was introduced in the Finance Act, 1994 for the first time during the Union Budget 1997. Subsequently, the definition of the term 'tour operator' was amended in the Union Budget, 1998 through the Finance Act, 1998 and later in the Finance Act, 2004; Finance Act, 2008. The extracts of these provisions are quoted below:

"Finance Act, 1994
Chapter V
SERVICE TAX

Section 64. Extent, commencement and application.
(1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable services provided on or after the commencement of this Chapter.

Section 66. Charge of service tax.— [1]There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent of the value of the taxable services referred to in sub-clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*), (*r*), (*s*), (*t*), (*u*), (*v*), (*w*), (*x*), (*y*), (*z*), (*za*), (*zb*), (*zc*), (*zd*), (*ze*), (*zf*), (*zg*), (*zh*), (*zi*), (*zj*), (*zk*), (*zl*), (*zm*), (*zn*), (*zo*), (*zq*), (*zr*), (*zs*), (*zt*), (*zu*), (*zv*), (*zw*), (*zx*), (*zy*), (*zz*), (*zza*), (*zzb*), (*zzc*), (*zzd*), (*zze*), (*zzf*), (*zzg*), (*zzh*), (*zzi*), (*zzk*), (*zzl*), (*zzm*), (*zzn*), (*zzo*), (*zzp*), (*zzq*), (*zzr*), (*zzs*), (*zzt*), (*zzu*), (*zzv*), (*zzw*), (*zzx*), (*zzy*), (*zzz*), (*zzza*), (*zzzb*), (*zzzc*), (*zzzd*), (*zzze*), (*zzzf*), (*zzzg*), (*zzzh*), (*zzzi*), (*zzzj*), (*zzzk*), (*zzzl*), (*zzzm*), (*zzzn*), (*zzzo*), (*zzzp*), (*zzzq*), (*zzzr*), (*zzzs*),

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[1] *Substituted by the Finance Act, 2007, w.e.f. 1-6-2007.*
Prior to its substitution, section 66 as amended by the Finance Act, 2006, w.e.f. 18-4-2006/1-5-2006, Finance Act, 2005, w.e.f. 16-6-2005, Finance (No. 2) Act, 2004, w.e.f. 10-9-2004, Finance Act, 2003, w.e.f. 14-5-2003, Finance Act, 2002, w.e.f. 16-8-2002, Finance Act, 2001, w.e.f. 16-7-2001, Finance (No. 2) Act, 1998, w.e.f. 16-10-1998

(*zzzt*), (*zzzu*), (*zzzv*) *and* (*zzzw*) of clause (*105*) of section 65 and collected in such manner as may be prescribed."

Provided *that the provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint."*

Finance Act, 1994

Finance Act, 1997 (No.26 of 1997)

(Assent of the President of India was given on 14.05.1997)

Section 65. Definitions.--

(95) *– "service tax" means tax leviable under the provisions of this Chapter;*

(*41*) "taxable service" means any service provided,–

(*a*) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;

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(*q*) to any person, by a tour operator in relation to a tour;

(*r*) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;

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(*43*) "tour" means a journey from one place to another irrespective of the distance between such places;

(*44*) "tour operator" means a person who holds a tourist permit granted under the rules made under the Motor Vehicles Act, 1988;

(*2*) for section 66, the following section shall be substituted, namely:—

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(*3*) With effect from the date notified under section 84 of the Finance Act, 1997, there shall be charged a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*) and (*r*) of clause (*41*) of section 65 which are provided to any person by the person responsible for collecting the service tax.";

(*41*) "taxable service" means any service provided,–

(*a*) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;

(*b*) to a subscriber, by the telegraph authority in relation to a telephone connection;

(*c*) to a subscriber, by the telegraph authority in relation to a pager;

(*q*) to any person, by a tour operator in relation to a tour;

"66. (*1*) On and from the date of commencement of this Chapter, there shall be charged a tax (hereinafter referred to as the service tax), at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (*a*), (*b*) and (*d*) of clause (*41*) of section 65 which are provided to any person by the person responsible for collecting the service tax.

(*2*) With effect from the date notified under section 85 of the Finance (No. 2) Act, 1996, there shall be charged a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (*c*), (*e*) and (*f*) of clause (*41*) of section 65 which are provided to any person by the person responsible for collecting the service tax.

(*3*) With effect from the date notified under section 84 of the Finance Act, 1997, there shall be charged a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*) and (*r*) of clause (*41*) of section 65 which are provided to any person by the person responsible for collecting the service tax.";

Part-B of the Finance Minister's Speech to the Union Budget 1997-1998 as presented before the Lok Sabha on 28.02.1997.

"146. The services sector contributes nearly 40% to the GDP. `Services' are products as much as `manufactured goods'. Both must bear taxes. Hence, I propose to extend the service tax to cover a number of well known services like:

- *Transportation of goods by road;*
- *Consulting engineers;*
- *Custom house, Steamer and Clearing and Forwarding agents;*
- *Air travel agents, tour operators and car rental agencies;*
- *Out-door caterers, pandal contractors and mandap keepers;*

Man-power recruitment agencies."

Finance (No.2) Act, 1998 (No.21 of 1998)
(Assent of the President of India was given on 01.08.1998)

(52) "tour operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act 1988 or the rules made thereunder;

(48) "taxable service" means any service provided,—

(a) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;

(b) to a subscriber, by the telegraph authority in relation to a telephone connection;

(c) to a subscriber, by the telegraph authority in relation to a pager;

(n) to any person, by a tour operator in relation to a tour;

(2) for section 66, the following section shall be substituted, namely:—

'66. (1) On and from the date of commencement of this Chapter, there shall be levied a tax (hereinafter referred to as the service tax), at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (a), (b) and (d) of clause (48) of section 65 and collected in such manner as may be prescribed.

(2) With effect from the date notified under section 85 of the Finance (No. 2) Act, 1996, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (c), (e) and (f) of clause (48) of section 65 and collected in such manner as may be prescribed.

(3) With effect from the date notified under section 88 of the Finance Act, 1997, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (g), (h), (i), (j), (k), (l), (m), (n) and (o) of clause (48) of section 65 and collected in such manner as may be prescribed.

(4) With effect from the date notified under section 116 of the Finance (No. 2) Act, 1998, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) and (z) of clause (48) of section 65 and collected in such manner as may be prescribed.

8.2 On careful perusal of the aforesaid definition of the phrase 'tour operator' under Section 65(44) of the Finance Act, 1994 and levy of service tax under Section 66(3) ibid, it transpires that initially in the year 1997, the levy of service tax was on the taxable service provided by a person who holds a tourist permit granted in terms of the rules made under the Motor Vehicles Act, 1988 i.e., 'tour operator', to any other person, in relation to a journey from one place to another, irrespective of the distance between such places, referred to as 'tour'.

This concept was further clarified in the Union Budget 1998, by revising the definition of 'tour operator' to mean a person engaged in the business of 'operating tours' in a tourist vehicle covered by permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder. The instructions issued by the department at the time introducing the service tax levy on 'tour operator' clarifies the extent of coverage of the services under the scope of tax net. The relevant instructions dated 29.08.1997 issued by the Ministry of Finance is extracted and given below:

"F. No.B.43/10/97-TRU dated 29.8.97
Sub: ***Imposition of Service Tax on Tour Operators – reg.***

I am directed to invite your attention to Section 88 of the Finance Act, 1994 which, inter alia, provides for levy of service tax on services rendered by Tour Operators. It has been decided to bring the above service under the Service tax net w.e.f. 1st September, 1997. Notification Nos. 37/97-ST to 40/97-ST dated 22.8.1997 have been issued in this regard.

2.1 As per section 88 of the Finance Act, 1997, 'tour operators' means a person who holds a tourist permit granted under the rules made under the Motor Vehicles Act, 1988 and tour means a journey from one place to another irrespective of the distance between such places and the taxable service means any service provided to any person by a tour operator in relation to a tour the rate of service tax is 5% and the value of taxable service in relation to the service provided by a tour operator to a client, shall be the gross amount charged by such operator from the client for services in relation to a tour and includes the charges for any accommodation, food or any includes the charges for any accommodation, food or any other facilities provided in relation to such tour.

2.2 As per rule 82 of the General Motor Vehicle Rules, 1989 a tourist permit is granted only a tourist vehicle. As per the Motor Vehicles Act, Section 2 (43) a tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed. The term tour operators covers any person who holds a tourist permit in respect of any vehicle. The service tax on tour operators is on operators who run / operate a tour on a motor vehicle provided that the tour operator holds a tourist permit under the Motor Vehicles Act, 1988 in respect of any motor vehicle. Service tax will be chargeable on all domestic and inbound tourist service provided by a tour operator holding a tourist permit. Service tax will also be chargeable on journeys / tours undertaken by tourist taxis and tourist buses (which also hold tourist permits) within and outside the State where they have been registered as tourist vehicles.

2.3 The tour operator can be a self-employed, single vehicle owner individual or a well organised firm providing a vast range of professional service in the field of tourism whether organized as a sole proprietorship / partnership a private or a public limited company. Even public sector undertaking operating tours, such as Indian Tourism Development Corporation, Delhi Tourism

Development Corporation etc. are covered under this levy. However State Roadways Corporations who ply passengers in the neighboring State, will not be covered by the levy as they do not require a tourist permit but operate on the strength of agreements between the concerned State authorities.

2.4 The services rendered by the tour operator may be only for providing transport service within or outside the town, city or states territorial limits. The services rendered by the tour operators may only be limited to providing transport service in relation to a tour or it may also include host of other services as in case of a package tour. The services provided by such a tour operator may also include, apart from providing the basic service of transportation from one place to another, services of providing boarding and lodging arrangements, local sight-seeing and guide services and a wide range of other value added services provided by the tour operators such as providing for porters, booking of arranging accommodation, reservation for entertainment / amusement parks, theatres and museums, providing / health and baby sitting services etc.

2.5 The service tax on services rendered by tour operators in relation to a tour shall be the gross amount charged by such operator from the client and shall include the charges for other services provided such as accommodation, food and other facilities in relation to such tour. In other words, it will be on the gross amount charged to the customer. However, in cases where the tour operator provides a package tour i.e. which necessarily includes accommodation for stay and may also include other facilities such as food, guide services etc., an abatement of 60% of the total amount charged may be given for the purposes of the services tax provided that the bill issued for this purpose clearly indicates that it is inclusive of such charges. In other words, services as provided that the bill issued for this purpose clearly indicates that it is inclusive of such charges. In other words, service tax would be leviable of 40% of the total amount charged in cases where the tour operator provides a package tour and the price of which mandatory includes charges for accommodation for stay provided during the course of the tour (Notification No. 39/97–ST refers). Further an abatement of 90% from the gross amount charged to the client has been provided where the tour operator provides the services solely of booking or arranging accommodation and the bill issued for this purpose includes cost of such accommodation (Notification No. 40/97-ST refers). However, this abatement will not be allowed in case the bill issued does not include the cost of such accommodation.

2.6 ***Service tax on services rendered by tour operators is only on services rendered in India in respect of a tour within Indian territory. Services rendered by tour operators in respect of out-bound tourism i.e. for tours abroad, do not attract service tax. In case of a composite tour which combines tour within India and also outside India, service tax will be leviable only on services rendered for tours within India provided separate billing has been done by the tour operator for services provided in respect of tours within India.”***

(Emphasis supplied)

“F. No.B.11/3/98-TRU dated 07.10.1998

Sub: ***Instructions on twelve new services through Finance Act, 1998 – reg.***

I am directed to invite your attention to Section 116 of the Finance (No.2) Act, 1998 which, inter alia, provides for levy of service tax on services rendered by:- (i) Architects, (ii) Interior decorators…(xii) Company Secretaries.

2. It has been decided to bring the above services under the Service Tax net with effect from 16th October, 1998. Notification Nos. 53/98-ST to 58/98-ST, all dated the 7th October, 1998 have been issued in this regard.

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7.3 An issue has been raised whether Service Tax is payable in respect of services rendered to foreign clients in India, and in respect of such services rendered abroad. It is clarified that Service Tax is payable on all taxable services rendered in India, whether to an Indian or foreign client. However, services rendered abroad shall not attract Service Tax levy as Service Tax extends only to services provided within India."

8.3 The aforesaid legal provisions and the scope of levy as explained in the departmental instructions, clearly provide that 'outbound tours' i.e., service rendered for tours abroad or outbound tours is not included in the scope of service tax levy till the year 1998. In other words, the levy of service tax covered only the taxable services rendered within the Indian territory for which the Finance Act, 1994 apply. Since, the application of Chapter V of the Finance Act, 1994 was not extended to the State of Jammu & Kashmir in terms of Section 64(1) ibid, it logically follows that the legal provision regarding levy and collection of service tax does not apply to the activities of service undertaken/rendered in the State of Jammu & Kashmir.

9.1 In the Union Budget for the year 2004, the phrase 'tour operator' was defined elaborately by an 'means' part and another 'inclusive' part; and this had lead to certain confusion among the departmental officers about the scope of levy of service tax on 'tour operator' services rendered for outbound tours/tour to the State of J&K, leading initiation of show cause proceedings and passing of impugned order in this case. The extract of the legal provisions are as follows:

Finance (No.2) Act, 2004 (No.23 of 2004)

(Assent of the President of India was given on 10.09.2004)

(*xxi*) for clause (*115*), the following clauses shall be substituted, namely:—

'(*115*) "tour operator" means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder;

(*b*) for section 66, the following section shall be substituted, namely:—

"66. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten per cent. of the value of the taxable services referred to in sub-clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*), (*r*), (*s*), (*t*), (*u*), (*v*), (*w*), (*x*), (*y*), (*z*), (*za*), (*zb*), (*zc*), (*zd*), (*ze*), (*zf*), (*zg*), (*zh*), (*zi*), (*zj*), (*zk*), (*zl*), (*zm*), (*zn*), (*zo*), (*zq*), (*zr*), (*zs*), (*zt*), (*zu*), (*zv*), (*zw*), (*zx*), (*zy*), (*zz*), (*zza*), (*zzb*), (*zzc*), (*zzd*), (*zze*), (*zzf*), (*zzg*), (*zzh*), (*zzi*), (*zzj*), (*zzk*), (*zzl*), (*zzm*), (*zzn*), (*zzo*), (*zzp*), (*zzq*), (*zzr*), (*zzs*), (*zzt*), (*zzu*), (*zzv*), (*zzw*), (*zzx*) and (*zzy*) of clause (*105*) of section 65 and collected in such manner as may be prescribed.";

Charge of service tax.

Finance Act, 2008 (No.18 of 2008)
(Assent of the President of India was given on 05.10.2008)

(*18*) for clause (*115*), the following clause shall be substituted, namely:—

'(*115*) "tour operator" means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

Explanation.— For the purposes of this clause, the expression "tour" does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field;';

Section 65 (105) - *"taxable service" means any service provided or to be provided, —*

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(n) to any person, by a tour operator in relation to a tour;

Section 65 (95) *– "service tax" means tax leviable under the provisions of this Chapter;*

9.2 The interpretation of the definition 'tour operator' and the levy of service tax on taxable services provided by a tour operator has been endeavoured in great detail by the Larger Bench in the case of *M/s Cox & Kings Limited Vs. Commissioner, TAR, Mumbai* vide Interim Order No. 104/2023 dated 19.10.2023 in Service Tax Appeal No.386 of 2012, in clarifying the issue referred by the Co-ordinate Bench and in

providing the reply on the same. Earlier, in this case the division bench of the Tribunal at the West Zone, Mumbai upon examination of the case and the order passed by the Co-ordinate Bench of the Tribunal at Delhi in the case of *M/s Cox & Kings India Limited Vs. Commissioner of Service Tax, New Delhi* reported in 2013-TIOL-1907-CESTAT-DEL had observed that *"what is needed to be examined for the purpose of decision is the services provided in relation to the such 'Tours'. Similarly what needs to be examined was the place where such services in relation to a tour were provided and consumed. Instead the said decision treats the 'Tour' as the service and examines the location of the tour as the place where service was provided and consumed.".* Therefore, the following questions were placed before the Larger Benach of the Tribunal for decision. "(i) *whether the service that appellant are providing is taxable service under Section 65(105)(n) of the Finance Act as held by Tribunal in their own case or otherwise"* and "(ii) *whether the appellant is said to be providing the said service within the taxable territory?".* These have been elaborately dealt with by the Larger Bench and accordingly the questions referred to it have been answered in the above referred Interim Order dated 19.10.2023. The relevant paragraphs of the said order of the Larger Bench of the Tribunal in the case of *M/s Cox & Kings India Limited* (supra) are reproduced below:

> *"18. The first issue that has been referred to the larger bench is whether the service that the appellant is providing is a taxable service under section 65(105)(n) of the Finance Act.*
>
> *19. The division bench in Cox & Kings examined, as noticed above, whether the activity of providing services in relation to outbound tours during the period from 10.09.2004 to 30.09.2008 would fall within the ambit of a service provided by a "tour operator" and consequently subjected to levy of service tax. The division bench observed that the definition of "tour operator" has two facets. The business of* ***planning, scheduling, organizing*** *or* ***arranging*** *tours by any mode of transport including where the tour is by a tourist vehicle covered by a permit under Motor Vehicles Act is one facet of the definition, while* ***operating*** *of tours in a tourist vehicle covered by a permit granted under Motor Vehicles Act including planning, scheduling, organizing or arranging of such tours is another facet. Thus, where a person pursues a composite activity of operating tours and planning, scheduling, organizing or arranging of such tours by a mode of transport other than a tourist vehicle covered by a permit under the Motor Vehicles Act, then such activity would fall outside the scope of the definition of "tour operator". What persuaded the*

division bench to come to such a conclusion was the fact that the first facet was limited to the business of planning, scheduling, organizing or arranging of tours and excluded the operation of tour because if the first facet also included operating of tours, there was no necessity for the second and specific facet to include the operation of the tour in a tourist vehicle covered by a permit granted under the Motor Vehicles Act. The operating of a tour "by any mode of transport" would have clearly covered operating tour in a tourist vehicle covered by a permit granted under the Motor Vehicles Act and so the inclusionary clause would be rendered surplusage.

20. Tour operator service was brought within the ambit of service tax w.e.f. 1.9.1997. The levy of service tax was discontinued during the period 18.7.1998 to 31.3.2000 (during so-called tourism year) and was re-introduced w.e.f. 1.4.2000.

21. The taxing entry in section 65(41)(g) of the Finance Act is as follows:

"65. (41) "taxable service" means any service provided
...
(q) to any person, by a tour operator in relation to a tour"
22. The term „tour" was defined under section 65(43) as under:

"(43) "tour" means a journey from one place to another irrespective of the distance between such places"

23. The text of the above provisions have not undergone any change whatsoever, whether prior to 10.9.2004 or post 10.9.2004, except for renumbering of the clause.

24. The definition of „tour operator" has undergone various changes during different periods, which are as under:

*"**(i) 1-9-1997 to 6-10-1998:***
(44) "Tour Operator" means a person who holds a tourist permit granted under the rules made under the Motor Vehicles Act, 1988;
(ii) 7-10-1998 to 9-9-2004:
(44) "Tour Operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder;
(iii) 10-9-2004 to 15-5-2008:
(115) "Tour Operator" means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, siteseeing, or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder, (amendments are emphasised).
(iv) 16-5-2008 to 30-6-2012:

(115) "tour operator" means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit granted under the Motor Vehicles Act, 1988 Or the rules made thereunder.

Explanation.*- For the purposes of this clause, the expression "tour" does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field (amendments are emphasised).*

*25. The position, therefore, that emerges regarding the amendments made in the definition of „**tour operator**" from time to time is as follows*

26. Clause (q) was inter alia inserted in section 67 of the Finance Act and it is follows:

> *"67. Valuation of taxable services for charging service tax,- For the purposes of this Chapter, the value of taxable services, -*
> *.....*
> *(q) in relation to services provided by a tour operator to a client, shall be the gross amount charged by such operator from the client for services in relation to a tour and includes the charges for any accommodation, food or any other facilities provided in relation to such tour."*

27. Thus, the above valuation section provides that the value of tour operator service will not only include the gross amount charged for the tour but also the charges for accommodation, food or any other facilities provided in relation to such tour. This section elucidates that the services in relation to tour are accommodation, food or any other facilities which may be sight-seeing and medical facilities.

28. It would be appropriate to again reproduce the definition of "tour operator" w.e.f. 10.09.2004 to 15.05.2008 as contained in section 65(115) of the Finance Act and it is as follows:

> ***"65(115)*** *"tour operator" means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder."*

29. This definition can conveniently be divided into two parts:

> *"tour operator" means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport*

> *and*
> *any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder."*

30. In the first part of the definition, "tour operator" has been defined to mean any person engaged in the business of planning, scheduling, organizing or arranging tours by any mode of transport. This, of course, includes arrangements for accommodation, sightseeing or other similar activities.

31. The second part of the definition is exact reproduction of the definition of a „tour operator" from 16.10.1998 to 09.09.2004. It provides that a tour operator would include any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the provisions of the Motor Vehicles Act or the Rules made thereunder.

32. The definition of a "tour operator" uses both the words "means" and "includes". Justice G.P. Singh in Principles of Statutory Interpretation (13th Edition) has stated that when a word is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive, but where the word defined is declared to "include" such and such, the definition is prima facie extensive. It has also been observed that the natural meaning of the "means" part of the definition is not narrowed down by the "includes" part. The definition may also be in form of "means" and "includes", where again the definition would be exhaustive and that the meaning of the "means" part of the definition is not narrowed down by the "includes" part. This is what was observed by the Supreme Court in ***Hamdard (Wakf) Laboratories*** *vs.* ***Dy. Labour Commissioner and Others6*** *and the observations are:*

> *"33. When an interpretation clause uses the word "includes", it is prima facie extensive. When it uses the word "mean and include", it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression. (See G.P. Singh's Principles of Statutory Interpretation, 10th Edn., pp. 173 and 175.)"*

33. It is in the light of the aforesaid, that the definition of a „tour operator" has to be examined.

34. As noted above, the first part of the definition of a "tour operator" defines it to mean any person engaged in the business of planning, scheduling, organizing or arranging tours by any mode of transport. This would be an exhaustive definition of a "tour operator". However, the definition also provides that a "tour operator" would include any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act or the Rules made thereunder.

35. This portion of the definition of a "tour operator" also existed prior to the amendment in the definition of a "tour operator" on 10.09.2004. The intention in the amendment in 2004 was clearly to explain the definition of a "tour operator" and to bring within

its fold any person engaged in the business of planning, scheduling, organizing or arranging tour by any mode of transport. "Inclusive" part would best be interpreted in the normal standard sense to comprise of or consist of. The second part of the definition only removes any doubt that any person engaged in the business of operating tour in a tourist vehicle covered by a permit granted under the Motor Vehicles Act or Rules made thereunder would not be excluded from the definition of a "tour operator" contained in the first part. It needs to be noted that a permit granted under the Motor Vehicles Act or the Rules made thereunder does not operate beyond the jurisdiction of the country. The first part of the definition of a "tour operator" is by any mode of transport and, therefore, there is no restriction about the territorial jurisdiction of the country. It only deals with the planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport.

36. It is, therefore, not possible to hold that what is contained in the inclusive clause of the definition is necessarily not contained in the first part of the definition as was held by the division bench in the earlier decision in ***Cox & King****.*

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38. The contention of the appellant, however, is that all the functions like planning, scheduling, organizing or arranging tours undertaken by the appellant are aimed at the client enjoying the tour outside India and, therefore, as the services are consumed outside India, service tax would not be leviable. According to the appellant, though the Parliament is constitutionally empowered to levy service tax even on service provision outside India in view of the provisions of article 245(2) of the Constitution, but the Parliament has chosen not to levy tax on services provided outside India. In this connection, learned senior counsel also placed reliance upon the provisions of section 66 of the Finance Act and submitted that service tax would be leviable only if the service is provided in India and in this connection placed reliance upon the Circular No. 36/4/2001 dated 18.10.2001 and the Circular F. No. B. 43/10/97-TRU dated 22.08.1997. Learned senior counsel also placed reliance upon the Export of Services Rules 2005 and Taxation of Services (provided from outside India and received in India)

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41. The Circular has to be read in the light of the definition of "tour operator" prevailing at that point of time. Thus, only arranged tours using a tourist vehicle covered by permit granted under Motor Vehicles Act were brought under the ambit of service tax. However, the definition of "tour operator service" underwent a change w.e.f. 10.09.2004. The amended definition introduced the services such as planning, scheduling, organising or arranging tours, arrangements for accommodation, sightseeing, or other similar services as tour operator service. Therefore, the tour itself

was not a taxable event but the activities related to arrangement of a tour would fall within the said definition.

42. As noticed above, services are provided by the appellant based in India to customers also based in India. The said service would fall within the amended the definition of "tour operator" and as they are provided within the taxable territory of India, service tax would be leviable under the provisions of the Finance Act. It is correct that prior to 10.09.2004 service tax was not leviable, but the definition of tour operator was amended and the amended definition brings within its ambit activity of planning, scheduling, organizing or arranging tours by any mode of transport.

43. Thus, before this larger bench is a reference arising from doubt about the interpretation of "tour operator", as per section 65 (115) of Finance Act (earlier section 65 (52) of Finance Act) intended to delineate the extent to which the "taxable service" envisaged by section 65(105) (n) of Finance Act stretches in the "inclusive" segment of the definition as controlling the rest of the definition when the activity is not limited to "planning, scheduling, organising or arranging tours" but involves utilisation of means of transport.

44. From the analysis and reasons elaborated above, it can safely be deduced that the decision of the Principal Bench in Cox & Kings, based on validation of the Circular of 1997 as not being impacted by the several changes in the definition of "tour operator", may not be applicable in case of "outbound tours" over the period of time that the activity had been taxable.

45. Several aspects of the relevant definitions and even the evolution of the extent of coverage of the levy intended by section 65(105)(n) of the Finance Act must inform the resolution of any dispute over taxability of consideration received by an Indian entity for rendering service in relation to "outbound tours" commencing in India. The intent of Finance Act is to tax specified activity that, undeniably, takes place in India and to exclude tax on any activity that, undeniably, does not occur in India. The definition of "taxable service" must fit within that framework for it to be applicable.

46. There can, thus, be no two opinions about taxability of tours undertaken within India. However, the definition in section 65(105) of Finance Act is not limited to the physical aspect but also the precursor preparation which is taxable on its own standing within the scope permitted by section 65(105)(n) of Finance Act. Such evaluation of extent of taxability cannot be decided upon without reference to the factual aspects of the activity sought to be brought within the tax net by service tax authorities.

47. The earlier decision in ***Cox & Kings*** *had not determined its decision on the given set of facts but on restricted interpretation of the definition of "tour operator" as prevailing then. The stated*

interpretation of the definition is not consistent with the revision in the definition. Hence, the division bench assigned to dispose off this appeal will have to decide the outcome without placing reliance on the interpretation of the Principal Bench relied upon by the appellant. All the issues in the appeal as well as the order impugned therein will have to be decided on merits.

48. The referral bench at Mumbai also sought opinion of larger bench on the provision of service by appellant within the taxable territory. As seen from the facts of the case, the dispute in its entirety pertains to the period prior to April 2011. The then prevailing regime of tax on services was limited to enumerated activities rendered to a person (or designated recipient) by a person and there was no requirement for determining "taxable territory" for levy of tax; as long as both receiver and provider were in India, such services were taxable. With the transition in July 2012 to "negative list", lacking identifiable activities to be taxed, the framework of levy was to be expressed as provision of service for another within "taxable territory" for default liability in the hands of provider of service. Therefore, in the dispute before the division bench, geographical significance was not "taxable territory", which could be situated anywhere in the world according to the nature of activity undertaken, but within "whole of India…" without having to look for any other framework.

49. Accordingly, we answer the reference thus:
(i) *The taxability of activity undertaken by the appellant will have to be decided on the facts peculiar to the case and in accordance with intent of section 65, section 66 and section 67 of the Finance Act; and*
(ii) *The dispute in this appeal, i.e., from 01.04.2005 to 31.03.2011, pertaining to the period prior to the "negative list" regime does not have to consider "taxable territory" as affecting the decision thereon."*

9.3 Therefore, in terms of the issues decided by the Larger Bench in the case of *M/s Cox & Kings India Limited* (supra) vide Interim Order No.104/2023 dated 19.10.2023, in order to decide on the issue of services provided by 'tour operator' in the State of J&K, taxability of services rendered by the appellant, for the period post 10.09.2004, we have carefully examined the legal provisions existing at the relevant point of time vis-à-vis the factual matrix of the present case. On careful perusal of the aforesaid definition of the phrase 'tour operator' under Section 65(115) of the Finance Act, 1994 w.e.f. 10.09.2004 and the levy of service tax as explained in the Budget instructions for the year 2004 issued by the Ministry of Finance, the scope of levy of service tax would become clear. The relevant paragraph of the said instructions is extracted and given below:

*"D.O.F. No.334/3/2004-TRU
dated 08.07.2004*

"(IV) Service Tax
6.4.4 The scope of existing services is being extended as follows:
(a)….
(f) Tour operator services to include such package tour operators who organize tours involving any mode of transport"

9.4 Further, during 2008 Union Budget some more changes were also brought in the phrase 'tour operator' by providing an explanation. The relevant paragraph of the said instructions is extracted and given below:

*"D.O. F. No.334/1/2008-TRU
New Delhi, 29th February, 2008*

5. SCOPE OF SPECIFIED TAXABLE SERVICES IS BEING AMENDED AS FOLLOWS:
5.3 TOUR OPERATOR SERVICE:
5.3.1 Services provided in relation to a journey from one place to another in a tourist vehicle having contract carriage permit is leviable to service tax under tour operator service. Tour in a vehicle covered by the following categories of permits granted under the Motor Vehicles Act (MVA), 1988 and rules made thereunder are clearly leviable to service tax under tour operator service:
(i) Contract Carriage permit granted under section 74 of the MVA, 1988 and authorisation certificate issued under Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993; and
(ii) Permit granted under section 88(9) in accordance with the provisions of section 74 of the MVA, 1988 in respect of tourist vehicles, for the purpose of promoting tourism. Since the permits under the above two categories are granted only for tourist vehicle, service tax is leviable if the tour is provided in the above categories of vehicles.

Field formations may verify the nature of permits issued to the vehicles from the transport authorities and collect service tax from vehicles having the above two types of permits.

5.3.2 Section 65(115) defining tour operator is being amended so as to include services provided in relation to a journey from one place to another, generally known as point-to-point tour, in a vehicle having contract carriage permit, even if the vehicle does not meet the criteria specified for tourist vehicles. With this amendment, journey from one place to another conducted in a vehicle having contract carriage permit shall be leviable to service tax under tour operator service. Service tax is not leviable under tour operator service only if the tour is conducted in a vehicle having stage carriage permit. Field formations may collect data from transport authorities regarding details of contract carriage permits issued.

5.3.3 It may be noted that services provided in relation to a journey from one place to another conducted in a tourist vehicle having contract carriage permit for use by educational bodies shall be excluded from the scope of the taxable

service. Educational bodies do not include commercial training or coaching centres."

10.1 In terms of the nature of services provided by a 'Tour Operator', these service providers can be categorized on the basis of nature of tour, types of business and their area of operation of package tours. These include inbound, outbound, domestic tours and ground operator. Inbound tour operators are those operators who handle inbound foreign tourists in the host country. In case of inbound tours category provided by the appellant, tours are for places within India but rendered for foreign tourists. The said inbound tour package would commence, be wholly performed and terminate in India. In case of domestic tours category, tours are provided within India for Indian residents. There is no dispute with respect to payment of service tax, in respect of domestic tours and inbound tours, as the services provided by the appellant service provider in India, for such tours have been rendered to the persons availing the tour facility in India. However, in case of tour to locations in the State of J&K category, which is the issue under dispute, the tours are between places located within India for Indian residents, but the Finance Act, 1994 does not apply to the said jurisdiction. The tour in such case starts from the place of arrival in the State of J&K and gets completed at the place of destination within the State of J&K itself.

10.2 Further, in respect of 'Package Tour' the service providers offer various bouquet of tour destinations in foreign countries/State of J&K. They are specialised in promoting and designing multi-locational tours. They sell a package tour to an individual or a group of people for a specific pre-decided period and destinations. They arrange travel documents, transportation to a central point where the tour starts and contracts with inbound tour operators/ground operators to provide accommodation, transportation, local sightseeing and other services as needed throughout the tour. Generally, these operators work in liaison with the inbound tour operators/ground operators at the tourist destinations and offer services involving meeting inbound tour group at the airport, transferring the tour group from the airport to the arranged place of accommodation in town hotel, arranging/organising local sightseeing that may be a single day or multi days tour of few or

more places, region or area. These may be in the form of business or leisure oriented tours.

10.3 For illustrative purpose, in case of appellant, such package tour is of "*Kashmir – Paradise on Earth"* the details of such 7 days package tour consist of itinerary such as 7 days journey starting from Day 1 at Srinagar airport arrival – Day 2 Sonmarg – sledge car ride at exotic snow point – Day 3 Dal Lake of Srinagar – Shikara ride; local temples visit – Day 4 Gulmarg – Gandola cable car ride, horse riding at snow point – Day 5 Pahalgam – explore natural beauty of exotic place – Day 6 Pahalgam – enjoy natural beauty of Chandanwadi – Day 7 Pahalgam and transfer to Srinagar airport departure. Thus, the tour in this case will be wholly performed within the State of J&K, that is outside the scope of the coverage of the Finance Act, 1994.

10.4 The customers who would like to avail such services from the appellant tour operator has to complete a 'Booking Form' which include the requisite details of the individual as passenger with Identity/ Passport & Visa details; Contact information; Accommodation/Hotel pass; tours/ cruises; additional services sought etc. The terms and conditions in providing such services for outbound tour include various clauses covering rates, booking, payment, amendment fee, unutilised services, cancellation & refunds, travel documents, insurance, responsibility, communication, force majeure clause etc., Reservation against such package tours are made by the appellant on payment of deposit for a certain percentage of the total cost of services required per person; and the same will be adjusted against the full tour price payable, while making the balance payment. The said terms & conditions also include that in the event of any cancellation due to whatever reason, the initial deposit amount paid shall stand forfeited and further cancellation fee shall be levied as per the terms and conditions of the relevant clause. From the above, it could be seen that the services such as "planning, scheduling, organizing or arranging" have been designed in the form of 'package' which the customer selects while booking the package tour, while the actual 'operating' of tour in terms of journey is availed or consumed by the passenger tourist as service receiver at the starting place and ends at the place of departure in the State of Jammu & Kashmir.

10.5 The phrase 'tour', 'tour operator', 'taxable service' provided in the Finance Act, 1994, as amended from time to time, under sub-sections (43), (44) and (41)(q) of Section 65 ibid [from 15.06.1997 to 15.10.1998]; under sub-sections (50), (52) and (48)(n) ibid [from 16.10.1998 to 09.09.2004]; under sub-sections (113) and (115) and (105)(n) of Section 65 ibid [from 10.09.2004 to 30.06.2012] read with Section 64, 66 ibid provides for the scope of levy of service tax. The charge of service tax levy is on the services specified under Section 65(105)(n) ibid, as amended, at the rate specified in Section 66 ibid and it is also required to be seen that the entire levy of service tax shall be within four corners of service tax statue as contained in Chapter V of the Finance Act, 1994, in order to sustain the amount collected as service tax as legally valid tax for the Government exchequer. Even though the disputed period in this case relates to 01.04.2005 to 30.09.2010, for complete understanding of the issue, it would be useful to read the contours of the definition of the phrases and the charging provisions right from the time of introduction of the levy of service tax.

10.6 The definition of 'taxable service' more or less remains unchanged and is provided during the relevant period of dispute under Section 65(105)(n) ibid which defines it as follows: taxable service means "any service provided, to any person, by a tour operator in relation to a tour". Similarly, the definition of the phrase 'tour' has also remained unchanged from the beginning of the levy on this taxable service. 'Tour' has been defined under Section 65(113) ibid "as a journey from one place to another irrespective of the distance between such places". We have already seen the elaborate discussion of the phrase "tour operator" under Section 65(115) ibid in the earlier paragraphs as discussed by the Larger Bench in the case of *M/s Cox & Kings India Limited* (supra). On plain reading of the above legal provisions, it is clear that firstly there shall be an activity of 'tour' or journey undertaken from one place to another; and certain services are offered by one person viz., service provider to another person viz., service receiver, wherein the service provider shall fall under the scope of the phrase 'tour operator'; and such services are consumed or utilized by the service receiver, completing the activity of rendering of

such service and the provisions of levy of service tax and its application is under the overall frame work of Chapter V of the Finance Act, 1994, to conclusively state that a taxable service as per Section 65(105)(n) ibid has been provided by a tour operator. In other words, in the case of this taxable service, unless there is a journey, and any service provided by a tour operator has a relation to such journey, the services cannot become as taxable in terms of the Finance Act, 1994. On harmonious reading of the provisions of the Finance Act, 1994 as it existed during the disputed period and particularly Sections 64 and 66 ibid, we are of the prima facie view, that services provided by a tour operator, in relation to a journey which begins in a place within the State of J&K for which the Chapter V of the Finance Act, 1994 did not extend to; and ends in a place within the State of J&K, being consumed by a person while he remains within the State of J&K during such consumption of service, cannot be brought into the scope of taxable service as provided under Section 65(105)(n) ibid for the purpose of levy of service tax under Section 66 and Section 64 of Chapter V of the Finance Act, 1994. We may further add as a matter of clarity that the scope of the phrase 'tour operator' may cover any person performing certain services as per definition given for the phrase 'tour operator', and the phrase 'taxable service' may also understood as any service rendered by a 'tour operator' so defined; and furthermore the phrase 'tour' undertaken by a service receiver may further be defined to include 'journey undertaken between any one place to another', whether domestic or outside India, but the taxable nature of service tax levy in terms of Section 64 and 66 ibid, is only for the services rendered by a tour operator to any person for the journey performed within the geographical area to which the Chapter V of the Finance Act, 1994 apply. It is also important to note that it is not the case of the Revenue, that the services provided by the appellant for such package tour in the State of J&K is covered under the scope of Section 66A ibid, while planning, scheduling, organizing, arranging for or operating the tour, the appellant had liaised with various persons situated abroad who are actually rendering the service to the persons during their journey abroad, in order to bring the services under the service tax net. Therefore, we are of the considered view that the services provided in relation to tour/journey between two places within the State of Jammu& Kashmir to which the application of Chapter V of the

Act of 1994 was not extended to, is not covered within the tax net of the service tax levy under the Finance Act, 1994.

10.7 The instructions issued by the Ministry of Finance while expanding the scope of the phrase 'tour operator' by explaining the changes brough in the Finance Act, 1994 w.e.f. 10.09.2004, also provides guidance on the true nature and scope of the legislative changes brought in by the Government. The said instructions provided to the filed formations states as follows:

17 September, 2004

Issues pertaining to Service Tax - regarding the Finance Bill,2004

The Finance Bill (No.2), 2004 has been enacted on 10.09.2004. With the enactment of the Finance Bill, The following new services have come under the service tax levy,-

Business exhibition services
Airport services
Transport of goods by air
Survey and exploration of minerals
Opinion poll services
Intellectual property services (other than copyrights)
Forward contract services
Pandal or shamiana services
Outdoor catering services
TV and radio programme production services
Construction services (commercial and industrial buildings or civil structures)
Travel agents (other than air/rail travel agents)
The following taxable services get expanded to include,-
Commission and installation service to include erection service
Stock brokers to include sub-brokers
Cable operators to include multi system operators
Business auxiliary service to include activities relating to procurement of inputs, production of goods (not amounting to manufacture) or provision of services on behalf of a client.

Financial services to include some more specified financial services. Such services provided by non-banking financial company, body corporate or any other commercial concern are also being subjected to service tax.

Tour operators to include such package tour operators who organize tours involving different modes of transport.

The risk cover in life insurance becomes subject to levy of service tax.

The rate of service tax on all taxable services, including the new and expanded services becomes 10%.

The education Cess of 2% of the service tax would be leviable on taxable services.

The scope of these changes is explained in the following paragraphs.

Extension of tour operator service to package tour operators using different modes of transport: At present, tour operator service covers package tour operators also. However, under the present definition, such package tours attract service tax only if such tours involve modes of transport other than road (say a combination of air-rail-cab travel). The definition of tour operator has been suitably expanded. While the existing levy on tour operators engaged in operating tours in tourist vehicles remains as such, in case of a package tour (which are planned, scheduled, organized or arranged by tour operators), the scope of the levy is being extended by removing the limitation regarding transportation by tourist vehicles only. Such tourist operators would be subjected to service tax irrespective of the mode of transport used during such tours. The abatements (notification no.39/97-ST) in case of package tour operators (providing transportation and accommodation) would remain at 60%.

xxx xxx xxx xxx

The CENVAT Credit Rules, 2004 have been issued allowing credit across goods and services (refer Notification No.23/04-CE(NT), dated 10.09.2004).

The above changes may be immediately brought to the notice of the field formations and the trade. All possible assistance and facilitation may be provided to providers of such services who have been subjected to the above changes, so that the implementation of these new levies or other changes is smooth and the tax payers do not face any problem in this regard.

On plain reading of the above, it transpires that the existing levy on services provided by a tour operator in a tourist vehicle, has been expanded by removing the restriction on usage of mode of transportation from limited 'tourist vehicle' to 'any mode of transport'. The abatement provided at the rate of 60% in case of package tour providing transportation and accommodation would continue to be available to them. Therefore, there is no scope for bring the services provided with respect to tour between two places within the State of J&K, within the service tax net by widening the tax base through the amendments introduced in the Union Budget 2004.

10.8 We also find support from the judgement of the Hon'ble Supreme Court in the case of *Panchugopal Barua Vs. Umesh Chandra Goswamy* – AIR 1997 SC 1041, pp 1046, 1047, wherein it was held that

> "*It is not permissible to extend the provisions of an Act, made not applicable by the legislature to a State, by a judicial order as it amounts to enacting legislation by the High Court, a power not vested in the judiciary*."

Further, in the case of *Mst. Jagir Kaur and another Vs. Jaswant Singh* reported in 1963 (2) CRI. L. J. 413 :: AIR 1963 SUPREME COURT 1521, it is quoted as follows:

> *"In Halsbury's Laws of England, Vol. 36, 3rd Edn. at p. 429, it is stated :*
> *"..........the presumption is said to be that Parliament is concerned with all conduct taking place within the territory or territories for which it is legislating in the particular instance, and with no other conduct. In other words, the extent of a statute, and the limits of its application, are prima facie the same*."

10.9 Therefore, in harmonious reading of the Chapter V of the Finance Act, 1994 with the 'extent and commencement and application' of such legal provisions as contained in that chapter, as per Section 64 ibid, we are of the considered view that the services provided with respect to tour between two places within the State of J&K, would not be covered under the statute governing levy and collection of service tax.

11. In this regard, we find that in the identical facts of the case arising in the case of *Heena Tours & Travels and Heena Enterprises Vs. Commissioner of Central Excise & Service Tax, Surat-I* vide Final Order No. 12071-12072/2024 dated 20.09.2024, the Co-ordinate Bench of the Tribunal has decided the issue in favour of the appellants on the grounds of limitation and confirming the demand for normal period, on the ground that entire activity of planning, scheduling, organizing and arranging is undertaken within the taxable territory. However, the aspect of such activities amounting to service only when it relates to a to a 'tour' performed within the taxable territory or consumed by the service receiver within the taxable territory, in order attract the scope of levy as 'taxable service' was not considered. Therefore, we are of the view that the said decision of the Co-ordinate Bench of the Tribunal is distinguishable to the above extent.

12. Revenue has contended that the learned adjudicating authority has not imposed service tax for the extended period and recovered interest, imposed of penalty on the appellant. Since, the entire demand of service tax as proposed in the SCN and to the extent it was confirmed by the adjudicating authority has arisen from the determination of service tax liability on services provided by a 'tour operator' with respect to tour provided for arrival and destination within the State of Jammu & Kashmir, which have been discussed at length in the foregoing paragraphs and was held to be not liable for

levy of service tax during the disputed period, the grounds for appeal filed by Revenue does not sustain.

13. In the above backdrop of the factual matrix of the present case, we find that the appellant are not required to discharge service tax liability in respect of the disputed services under the Finance Act, 1994. In the above circumstances and on the basis of the discussions at paragraphs at 6.1 to 11 above, we find that there are no strong grounds to hold that the appellant did not pay service tax in respect of any service provided to package tours for arrival and destination within the State of Jammu & Kashmir, during the disputed period from April, 2005/01.10.2005 to 30.09.2010. Therefore, we do not find any merits in the impugned order of the learned Commissioner (Adjudication) in confirmation of adjudged demands on the appellant.

14. In the result, the impugned order dated 23.04.2013 is set aside and the appeal filed by the appellant is allowed in their favour. Appeal filed by Revenue is dismissed.

(Order pronounced in the open court on 15.06.2026)

(S.K MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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