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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 19/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70390-70391/2017-SM[BR] dated 13/02/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70137/2016	**Neelam Singh** Palahari Balaiysa Tehsil AZAMGARH- U.P
2	ST/70138/2016	**Rajnath Singh** Palahari Balaiysa Tehsil AZAMGARH- U.P

Name and Address of Respondent

3	C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001
4	C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Vineet Kumar Singh,Advocate
5 Narain Nagar, Sector 11,
Indira Nagar,
Lucknow,
Uttar Pradesh

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos.ST/70137 & 70138/2016-ST[SM]

Arising out of Order-in-Appeal Nos.142, 143 & 144/ST/ALLD/2015 dated 31.08.2015 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad.

Neelam Singh (in Appeal No.ST/70137/2016)
Raj Narain Singh (in Appeal No.ST/70138/2016)

...APPELLANT(S)

VERSUS

Commissioner of Custom, C.E. & S.T., Allahabad

...RESPONDENT (S)

APPEARANCE
Shri Vineet Kumar Singh, Advocate for the Appellant(s)
Shri D.K. Deb, Asstt. Commr., (AR) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT: 13.02.2017

FINAL ORDER NO.-70390- 70391/2017

Per Mr. Anil Choudhary :

The issue in these appeals is, whether the Court below have rightly clubbed the turnover of these two appellants for the purpose of allowing the threshold exemption or SSI exemption and secondly, whether for the purpose of calculating SSI Exemption under the classification of 'Rent-a-Cab service' operator where the gross receipts Form part of the aggregate value towards the taxable service, or the amount as reduced by the exemption allowed vide Notfn No.1/2006-ST is to be considered.

2. The appellants herein are husband and wife, who are engaged in the business of providing Rent-a-Cab Operator service. Firstly, a joint show-cause-notice dated 04.10.2012 was issued on both appellants alleging therein that as per the data received from Uttar Pradesh State Road Transport Corporation, Azamgarh, the details of payment

received, it appeared that they have failed to pay Service Tax for the period 2007-08 to 2011-12, aggregating Rs.1,41,806/- requiring to answer as to why not the said tax be demanded, invoking the extended period and further penalty was proposed. Subsequently, a separate show-cause-notice was issued on Smt. Neelam Singh dated 18.07.2013 demanding Service Tax for the period 2008-09 and 2009-10 aggregating Rs.52,429/- by invoking the extended period of limitation with further proposal for imposition of penalty. Vide common Order-in-Original No.67/ST/VNS/2013 dated 27.08.2013, the show-cause-notices were adjudicated, placing reliance on the ruling of Hon'ble Allahabad High Court in Writ Petition No.11582 (MB) of 2008 in UPSRTC Vs. Commissioner of Central excise wherein, the Hon'ble High Court have held that the Service Tax is payable by a private bus operator whose buses are attached with M/s UPSRTC, through individual agreements and fall within the category of Rent-a-Cab operator. It had been claimed by the appellants that their turnover falls below the threshold exemption limit, they are separate in their business, having separate Income Tax PAN and accordingly no Service Tax is payable in view of the threshold exemption provisions as provided in Notification No.6/2005-ST, read with Notification No.1/2006-ST. The Adjudicating Authority, it appears have without recording any reason, have allowed the threshold exemption only in the case of Raj Narain Singh and have not allowed the exemption in the case of Appellant-Neelam Singh and accordingly have confirmed reduced demand of Rs.76,446/- against Raj Narain Singh with equal amount of penalty and have confirmed the proposed demand of Rs.52,429/- on Smt. Neelam Singh along with equal amount of penalty under Section 78 of the Act. Further, penalty was imposed of Rs.5000/- on both the appellants under Section 69 of the Act and further penalty was imposed of Rs.5,000/- on both the appellants under Section 77(2) of the Act.

3. Being aggrieved, the appellant preferred appeal before learned Commissioner(Appeals) who vide the impugned order was pleased to reject the appeals.

4. Being aggrieved, the appellants are before this Tribunal. The learned counsel for the appellants, Mr. Vineet Kumar Singh have urged that the courts below have erred first in aggregating the turnovers for the purpose of SSI exemption, which is not at all permissible without there being any proposal in the show-cause-notice for the same. Secondly, he urges that so far the aggregate value for the purpose of SSI exemption, Notification No.6/2005-ST clearly indicates, in the explanation to the notification that only the taxable amount received towards the taxable service, i.e. the amount after abatement is to be considered towards the gross amount for the purpose of exemption under notification No.6/2005-ST. Accordingly, he prays for allowing the appeal and setting aside the impugned orders.

5. The learned AR for Revenue have relied on the impugned orders.

6. Having considered the rival contentions, I find that the definition of aggregate value as given in clause 3 of Notfn. No.6/2005-ST in explanation B reads as follows: -

"aggregate value not exceeding four lakh rupees" means, the sum total of first consecutive payments received during a financial year towards the

"gross amount" as prescribed under Section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to four lakh rupees but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act or under any other notification."

6.1 From a plain reading, it is evident that the 2nd clause states 'such gross amount' actually qualifies the words "gross amount" in the 1st clause. Accordingly, it is evident that the gross amount prescribed the amount, not including payments received towards such gross amount, which are exempt from whole of the service tax leviable thereon, under section 65 of the Finance Act under any other notification. Further on reading Notfn No.1/2006-ST, it is evident that the said notification exempts 60% of the gross receipts towards the service 'Renting-a-Cab', as defined in sub-clause 'o' of clause 105 of Section 65 of the Finance Act read with Section 66 of the Finance Act. Accordingly, I hold for calculating that for the purpose of determining the aggregate value for exemption under Notification No.6/2005-ST, only the net value received i.e. after the abatement under Notfn. No.1/2006-ST is to be considered. Secondly, I find that there is no proposal in the show-cause notice for clubbing the turnover of these two appellants for the purpose of threshold exemption. Accordingly, I hold that the said clubbing is bad and further direct that the appellants are entitled to threshold exemption separately. Accordingly, the appeals are allowed with consequential benefits.

6.2 The matter is remanded to the Adjudicating Authority for the limited purpose of calculating the net tax payable, if any, after implementing the orders and directions as given hereinabove. The appellant is also directed to file a copy of calculation with the adjudicating Authority along with a copy of this order for his appreciation and finalisation.

(Dictated and Pronounced in the open Court)

Sd/-

Mishra

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
03/05/2017
Asstt. Registrar
38, M. G. MARG, ALLAHABAD-211001