FAX : 0532-2400149

REGISTERED / AD

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

Dated: 03/07/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/70593-70594/2017-CU[DB] dated 27/06/2017

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/70230/2016	**Istiaq Ahmad** C/o Israr Ahmed, Sarai Abdul Malik,phulpur ALLAHABAD UP
2	ST/70278/2016	**Istiaq Ahmad** C/o Israr Ahmad Sarai Abdul Malik PHULPUR ALLAHABAD UP
		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):

R.D. BANOUDHA & SITA RAM CONSULTANT
3-B/1,TEJ BAHADUR SAPRU ROAD,CIVIL LINES,ALLLAHBAD-211003

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL Nos. ST/70230 & 70278/2016-CU[DB]

(Arising out of Order-in-Appeal No. 135/ST/ALLD/2015 (in Appeal No. ST/70278/2016) & Order-in-Appeal No. 136/ST/ALLD/2015 dated 12/08/2015 (in Appeal No. ST/70230/2016) both passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Allahabad)

M/s Istiaq Ahmad **Appellant**

Vs.

Commissioner of Central Excise &

Service Tax, Allahabad **Respondent**

Appearance:

Shri Sita Ram (Consultant) for Appellant
Shri Pawan Kumar Singh (Supdt.) AR, for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 27/06/2017

FINAL ORDER NOs..70593-70594/2017

Per: Anil Choudhary

The issue in these appeals is whether the appellant is liable to pay Service Tax on hiring of his bus to IFFCO under the Rent Cab Scheme Service.

2. The brief facts are that the appellant had hired his buses to IFFCO under contract for hiring for a lump-sum rate of Rs.14,02,200/- for renting up to 2500 km in a month. Further for additional KMs as entitle to receive additional 7.2 per Km as per the contract retained 26 February, 2000. The annexure to the contract provides for further conditions and/or conditions for hiring of general shift bus 52 seater which states that the bus will be used for transportation of

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men and material of IFFCO will be run as per the directives of IFFCO. Generally, the vehicle run between Phulpur and Allahabad but at times have it may be required to go outside Allahabad also. Further, the terms that the appellant shall make available experienced driver and other staff has required along with the other tools and accessories etc., for the smooth running. Further the contract provides for a valid period of two years and also provide for submission of performance guaranty by the appellants in the form of Bank guaranty or similar more for 5% of the contract value etc.

3. By the impugned order the Learned Commissioner (Appeals) have held that the appellant is entitled to abatement as provided vide Notification No. 1/2006-ST dated 1 March, 2006 and further having pleased to reduce the penalty under Section 17 of the Act.

4. Heard the parties.

5. We are satisfied that the issues have been covered squarely by the ruling of Uttarakhand High Court in CC & CE vs. Sachin Malhotra reported at 2015(37) STR 684 wherein under similar facts and circumstances the Hon'ble High Court has held that what is sought to be taxed under the provisions i.e. under Section 65(105)(o) read with Section 65(91) of the Finance Act; 'Rent a Cab Scheme Operator' has been defined as a person which is engaged in renting of cabs. The word in relation to undoubtedly ~~do~~ having the effect of expanding the scope of taxation. But this cannot detract into

as to what is the transaction which is actually brought to tax. The answer of the question as to what is the tax as is the service in relation to renting of cabs. So the most important rent crucial element is where there is a business the Rent of Cabs. In other word any service which does not relate to renting of cabs would be irrelevant. Further, the Tribunal correctly propounded the principle that in case of renting a cab the control of the vehicle is make over to the hirer and is given possession for a short period which the contract contemplates to deal with the vehicle no doubt subject to the other terms of the contract, there leave to be no renting. Further notice was taken of the provisions to Section 75 of the Motor Vehicle Act, 1988 which provides that the Central Government made by Notification in the Official Gazette make a scheme for the purpose of regulating the business of renting of Motor Cabs or Motor Cycle to drive either by themselves or through driver of Motor Cab or Motor Cycle for their own use and for the matter connected therewith. Further Rent Cab Scheme, 1989 frame under Section 75 of the Motor Vehicle Act, provides that it shall be the duty of every hirer of Cab to keep the holder of license informed of his every movement from time to time. If a hirer so desires he may engage a person possessing a valid license to drive the vehicle so hired during the period of hire agreement. The Hon'ble High Court observed what is a fundamental importance and constitute the distribution feature between the Rent a Cab and hiring is that the in the case of hiring undoubtedly the owner of the vehicle retains control and possession, he either drives the vehicle himself or employs somebody else to drive the vehicle; and the customer merely makes use of the vehicle by travelling in the vehicle on the basis of a contract that he will pay the requisite hire charges for the period he uses the vehicle. Unlike the same, in the case of Rent-a-Cab, as is provided in the Motor Vehicles Act, the person is enabled to take the vehicle with him whereas he pleases, subject, no doubt, to the terms of the contract between the parties and he uses of vehicle as his own subject to his paying the rent, Hon'ble High Court confirmed the order of this Tribunal holding that hiring of vehicle and renting of vehicle are different and in case of hiring the hire charges are subject to Service Tax under Rent-a-Cab Scheme Service.

6. We find that the facts herein are squarely covered by the ruling of Hon'ble Uttarakhand High Court as ~~it was~~ noticed hereinabove. Accordingly, we allow the appeals and set aside the impugned order. We also hold that the appellant is not liable to pay Service Tax under the category Rent-a-Cab Scheme.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

lks

प्रमाणित प्रति/Cerified True Copy
05/07/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001