FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **30/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53495/2015-CU[DB]** dated **06/11/2015**

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/2471/2012	**Deepak And Co** 81,sudarshan Apartments, Plot No 82, I.p.extention, Patpar Ganj, N Delhi-92
		Name and Address of Respondent
2		C.S.T.-Delhi 17-B, I.A.E.A.House,M.G.Road, I.P.Estate, New Delhi, Delhi-110002

Copy To
3Advocate(s) / Consultant(s):

Puneet Agrawal,Advocate
ATHENA LAW ASSOCIATES, 808, L&T FLATS (SHREE AWAS), SEC-18-B, DWARKA, NEW DELHI-110078,

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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 C.D.R. **16** Office Copy **17** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICAPPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 6.11.2015

Service Tax Appeal No.2471 of 2012

Arising out of the order in appeal No.114/S.Tax/D-II/12 dated 18.5.2012 passed by the Commissioner of Central Excise (Appeals), Delhi II.

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Deepak & Co. .. Appellant

Vs.

C.C.E., New Delhi .. Respondent

Appearance:

Present Shri Saurabh Bhutra, Advocate for the appellant
Present Shri K. Poddar, A.R. for the respondent

Coram: Hon'ble Mr. Justice G.Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

Final Order No. 53495/2015

Per Justice G. Raghuram:

Heard the ld. Counsel for the appellant and the ld. A.R. for Revenue.

2. Appeal is preferred against the order dated 18.5.2012 passed by the ld. Commissioner (Appeals), Delhi II confirming service tax demand of Rs.6,04,130/-, apart from interest and penalties under Section 76 and 77 of the Finance Act, 1994 as assessed by the primary adjudication authority vide order dated 16.5.2011.

3. Under an agreement with the Indian Railway Catering and Tourism Corporation Ltd. (IRCTC), the appellant was licensed to provide certain specified services on trains, i.e. supply of bed rolls to passengers, cleaning of coaches/toilets and the like services. For rendition of such services during January 2009 to September 2009, appellant received consideration from IRCTC.

4. Proceedings were initiated by the show cause notice dated 13.4.2010 alleging that the appellant provided support services of business or commerce; failed to obtain registration, file returns or remit the tax due on the consideration received for providing such services. After due process of enquiry, the proceedings culminated in the primary adjudication order dated 16.5.2011. The primary authority confirmed the demand by classifying the services provided as support services of business or commerce.

5. Aggrieved, the appellant preferred an appeal which was however disallowed by the impugned order passed by the ld. Commissioner (Appeals). In para 12 of the impugned order, the lower appellate authority clearly recorded a finding that services provided by the appellants do not fall within the category of support services for business or commerce. As a consequence of this finding since the proceedings were initiated only on the allegation that appellants had provided services of support of business or commerce, the proceedings should have been dropped. However, the lower appellate authority proceeded to analyze the nature of the services and concluded that the

appellant had provided business auxiliary service and confirmed the demand assessed by the primary authority.

6. Since the demand was confirmed by the impugned order on a class of taxable service which was not alleged in the show cause notice, the demand cannot be sustained. In an identical fact situation and in respect of the same appellant as herein, for an earlier period, in Final Order No.52292/2014 dated 9.5.2014 in ST Appeal No.698/2012, this Tribunal quashed the order passed by the lower appellate authority therein.

7. For the reasons alike, the impugned order is quashed; the appeal is allowed. No costs however.

(Justice G. Raghuram)
President

(R.K. Singh)
Technical Member

scd/