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: 15/04/2014

To

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

Final Order No. **ST/A/51461/2014-CU[DB]** dated **01/04/2014**

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/Stay/56201/2013	ST/55874/2013	**Jasbhag Tours Pvt Ltd** Plot No 209, Adarsh Nagar, S. Bhag Singh Crossing, JAIPUR, RAJASTHAN.
			Name and Address of Respondent
1		ST/55874/2013	**Commissioner of Central Excise and Service Tax-Jaipur-i** NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR-302005 RAJASTHAN

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

Shri.Jatin Mahajan, Advocate

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 01/04/2014.
DATE OF DECISION : 01/04/2014.

Service Tax Stay Application No. 56 201 of 2013 in Appeal No. 55874 of 2013

[Arising out of the Order-in-Appeal No. 260 (RDN) ST/JPR-I/2012 dated 27-30/11/2012 passed by The Commissioner of Central Excise, Customs & Service Tax, Jaipur.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	:

M/s Jasbhag Tours Pvt. Ltd. — Appellant

Versus

CCE & ST, Jaipur – I — Respondent

Appearance

Shri Jatin Mahajan, Advocate – for the appellant.

Shri Govind Dixit, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No.51461/2014 Dated : 01/04/2014

Per. Archana Wadhwa :-

After dispensing with the condition of pre-deposit of service tax of Rs. 1,37,159/-, interest and penalties imposed upon the applicant, we proceed to decide the appeal itself.

2. The appellant is registered as provider of rent a cab services and was discharging its service tax accordingly. Based upon the scrutiny of balance sheet and income tax return, showing more income, Revenue entertained a view that the appellant has suppressed its income generated from rent a cab service and has thus evaded service tax.

3. In view of the above, proceedings were initiated against them culminating into passing of the present impugned orders.

4. It is seen that the appellants have taken a categorical stand before the authorities below that apart from providing rent a cab services, the appellant was also engaged in other businesses, which resulted in emergence of income to them. It is in this scenario that the income reflected in the income tax returns and the balance sheet is much more than the income yielded from running rent a cab service as reflected in the returns. However, when the matter was taken up in appeal before Commissioner (Appeals), the appellant raised an additional legal ground saying that even if the excess income shown in the balance sheet is presumed to be related to rent a cab service, they are not liable to pay service tax in respect of

the same as they are running their cab on per k.m. basis in which case they are not covered by the definition of rent a cab.

5. The Commissioner (Appeals), instead of deciding the issues on merits, held that the appellant has raised additional plea before him for the first time and in terms of Rule 5 of the Central Excise (Appeals) Rules, 2001, an assessee cannot raise the issue for the first time before Commissioner (Appeals). We find that the short dispute in the appeal relates to the fact as to whether the excess income reflected by the appellant in their balance sheet or in the income tax returns is relatable to his activity of rent a cab or not. The appellant has taken a specific stand that they were making earnings from other activities also in as much as they are not exclusively running the business of rent a cab service. We find that the charges against the appellant are of clandestine activities, which are required to be proved by the Revenue by production of positive evidences. In as much as in the present case, we find no evidence adduced by the appellant showing that the excess income was being earned by the party by suppressing the value of rent a cab services, we prima facie agree with the appellant that they have a strong case. We accordingly, dispense with the condition of pre-deposit of any amounts.

6. Further, Commissioner (Appeals) has rejected their legal issue of even rent a cab service not being a taxable service on the ground that it has been raised for the first time before him

and is hit by the provision of Rule 5. On going through the said rules, we find that the same relate to production of additional evidence for the first time before Commissioner (Appeals) and not to the legal issues raised before him. Such legal issues can be raised before the appellate authorities and are required to be decided by him.

7. In view of the above, we set aside the impugned order and remand the matter to Commissioner (Appeals) for decision on merits, after taking the entire evidence on record as also on the legal issue raised by the appellant. Stay petition as also appeal get disposed of in the above manner.

(Dictated and pronounced in open court)

4/4/14

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK