

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

Dated: 18/09/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/53597/2014-CU[DB] dated 26/08/2014

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/MISC/54845/2014, ST/57373/2013 ST/Stay/57977/2013		Singhnia Enterprises Manjusha, 15-480 Civil Lines RAIPUR, C.G 492001
		Name and Address of Respondent
2		Commissioner of Central Excise and Service Tax- Raipur CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR-492001 CHHATTISGARH

Copy To

3 Advocate(s) / Consultant(s):

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

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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

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

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing: 26.08.2014

ST/Misc/54845/2014
ST/Stay/57977/2013
ST/57373/2013-CU[DB]

[Arising out of Order-in-Original No. C/RPR/ST/24/2013 dated 31.01.2013 passed by the Commissioner (Appeals), Central Excise, Raipur]

For Approval & Signature :

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

1.	Whether Press Reporter 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. Singhania Enterprises

...Appellant

Vs.

CCE, Raipur

... Respondent

Present for the Appellant : Shri B.L. Narsimhan, Advocate
Present for the Respondent : Shri Amresh Jain, DR

FINAL ORDER NO. 53597/2014 DATED: 26.08.2014

PER: R.K. Singh

M/s. Singhania Enterprises (hereinafter referred to as the appellants) filed the miscellaneous application for early hearing of their stay application as the interim stay granted by Hon'ble Chhattisgarh High Court will expire soon. They had filed the stay application No. St/S/57977/2013 along their appeal No. ST/57373/2013-CU[DB] against Order-in-Original No. C/RPR/ST/24/2013 dated 31.01.2013 in



terms of which demand of Rs. 49,64,881/- has been confirmed along with interest and penalties under sections 76, 77 and 78 of Finance Act, 1994 have also been imposed. It is seen that the adjudicating authority vide the aforesaid Order-in-Original has confirmed service tax demands of (i) Rs. 29,77,552/- under Construction of complex service, (ii) Rs. 8,11,725/- under renting of immovable property service and (iii) Rs. 11,75,604/- under the transport of goods by road service. The appellants have essentially contended that the demand confirmed under the construction of complex service is not sustainable because they did not construct residential complex at all. Regarding the demand confirmed under renting of immovable property service, the appellants have contended that the renting was not for commercial purpose in as much as the flats were given on rent to Hidayatullah National Law University and / or Central Reserve Police Force to be used as a hostel by the former and as residences by the employees of the latter.

2. Having regard to the appellants' prayer and the nature of the case and with the consent of the learned AR, we proceed to decide the appeal itself waiving the pre-deposit.

3. It is seen that out of the amount of Rs. 29,77,552/- confirmed under the category of construction of complex service, an amount of Rs. 8,81,135/- relates to construction of load dispatch center for Chhattisgarh state Electricity Board and the remaining amount of Rs. 20,96,417/- relates to construction of University of kushabhauthakre patrakarita and Jansanchaar. For the sake of convenience the definition of construction of complex as given in Section 65 (30a) of Finance Act 1994 reproduced below:



(i) "Construction of Complex" means —

- (a) construction of a new residential complex or a part thereof; or
- (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
- (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;

Residential Complex is defined in Section 65 (91a) as under:

(ii) "Residential Complex" means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

4. From para 10.10 of the impugned order, it is evident that the demand of Rs. 8,81,135/- has been confirmed on an amount of Rs. 23705930/- the details of which are available in the table given in para 10.5 of the same order. This amount is the sum total of the amounts mentioned at serial Nos. 2e, 3c, 4c & 5b of the table given in the said para 10.5. It is evident from the details given against these serial numbers that this amount represents the payment received for construction of office building (load dispatch data center). Thus, it is clear that this amount does not pertain to construction of any

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residential complex or completion & finishing of residential complex or repair, alteration, renovation or restoration in relation to residential complex. Thus it hardly requires any further discussion to hold that the said component of impugned demand confirmed under the Construction of Complex Service is totally untenable.

Similarly, the remaining impugned demand of Rs. 20,96,417/- confirmed under Construction of Complex Service is in relation to the amounts charged for rendering service as mentioned at serial numbers 2f, 3d, 4d and 5c of the table given in the said para 10.5 of the impugned order. It is seen that the description of work mentioned in the said table against these serial numbers is, quote "University of Kusha Bhau Thakre Patrakarita and Jansanchaar at Khathadi Raipur", end-quote, and in the last column of the table against these serial numbers it is mentioned "office building". Thus as per the OIO itself this amount of Rs. 5,48,37,243/- which is the total of the amounts mentioned against serial nos. 2f, 3d, 4d and 5c of the table given in para 10.5 relates to construction of office building. Therefore it is totally misconceived that this should be classified under Construction of Complex service. Accordingly confirmation of demand of Rs. 20,96,417/- in respect of the construction of office building for University of Kusha Bhau Thakre Patrakarita and Jansanchaar under construction of complex services is totally unsustainable.

5. Coming to demand confirmed under renting of immovable property service, it is seen that the appellants have contended that this rental income was against flats given on rent to Hidayatullah National Law University for being used as hostel and to CRPF for being used as residences for their employees. It is seen that under section



65 (zzzz) of Finance Act, 1994 renting of immovable property service is defined as under:

"65 (zzzz) 5 [to any person, by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of business or commerce.]

Explanation 1.—

For the purposes of this sub-clause, "immovable property" includes— (i) building and part of a building, and the land appurtenant thereto;

(ii) land incidental to the use of such building or part of a building;

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

[(v) Vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce.]

but does not include-

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) land used for educational, sports, circus, entertainment and parking purposes; and

(d) building used solely for residential purposes and buildings used for the purposes of accommodation , including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.



Thus, prima facie, as per the contention of the appellants the rental income in respect of which demand has been confirmed would not be liable to service tax as it cannot be said to have been rented for use in the course of furtherance of business or commerce. Also if the contention that the flats which were rented out were used either as hostel or as residential accommodation then also they would not be liable to service tax in view of explanation 1(d) above.

However, it is seen that at the time of adjudication, the appellants had not made this argument and had not claimed the exemption on the basis of what is stated at the time of appeal before the Tribunal. Regarding the contention in their appeal that vide their letter dated 12.10.2012 they had brought this to the notice of the adjudicating authority, we have perused that letter and it nowhere clearly brings out that the rental income was from for renting out the property for hostel/residential purpose and was not for business or commerce. Therefore it is only fair that this portion of the demand is remanded for denovo adjudication so that the appellants can submit their claim along with the evidence before the adjudicating authority.

6. Regarding the impugned demand of Rs. 11,75,604/- under GTA service, the appellants have claimed that the same is not sustainable because the freight was less than Rs. 750/- for each trip. The appellants have submitted certain invoices in support of their claim. However the adjudicating authority in the impugned Order-in-Original has observed that the only defense which the appellants had taken at the time of adjudication was that this point was not raised in the audit report. The adjudicating authority rightly observed that merely because the point was not raised in the audit report, that cannot be a



ground that a Show Cause Notice in that regard cannot be issued. However as the appellants are now contending that the entire freight amount received pertained to freight charges where the freight was less than Rs. 750/- for each trip, and hence would be exempt from service tax, the evidence produced by the appellants in the form of vouchers etc. would need to be examined/verified vis-à-vis their claim for such exemption and therefore this component of demand also needs to be looked afresh by the adjudicating authority.

7. In the light of the foregoing, we pass the following order:

- (i) We set aside the impugned order relating to the demand of Rs. 29,77,552/- confirmed under construction of complex service.
- (ii) As regards the demand of Rs. 8,11,725/- confirmed under renting of immovable property service and the demand of Rs. 11,75,604/- confirmed under GTA service, we set aside the impugned order relating thereto and remand the case for denovo adjudication with the direction that the appellants shall be given an opportunity to present their case and related evidence with regard to these two components of the impugned demand.



(Justice G. Raghuram)
President



(R.K. SINGH)
TECHNICAL MEMBER

Neha