

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

Dated: 27/01/2014

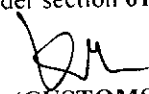
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/50094/2014-CU[DB] dated 07/01/2014

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)

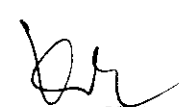
Application	Appeal	Name and Address of Appellant
1	ST/57909/2013	Fairy Land Hotels And Resorts P Ltd Yashoda Mall, salasar, I, city Centre GWALIOR M.P 474011

2		Name and Address of Respondent Commissioner of Central Excise and Service Tax-Indore P.B.NO.10...MANIK BAGH ROAD, MANIK BAGH PALACE, INDORE, MADHYA PRADESH 452001
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Copy To**3 Advocate(s) / Consultant(s):**

**M/S S D S D & ASSOCIATES
21, NEW GOVINDPURI, NEAR V.C'S
BUNGLOW,
UNIVERSITY ROAD,
GWALIOR
(M.P.)
474011**

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 07.01.2014

For Approval and Signature.

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

**Service Tax Stay Application No. 58507 of 2013 in
Service Tax Appeal No. 57909 of 2013**
(Arising out of order in appeal No. IND/CEX/000/APP/394/2012 dated 18.12.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Indore).

M/s Fairyland Hotels & Resorts (P) Ltd., Appellant

Vs.

CCE, Indore

Respondent

Appearance:

Shri Deepak Kumar Bajpai, C.A. for the appellant
Shri Amresh Jain, DR for the Revenue

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)



Final Order No. 50094/2014

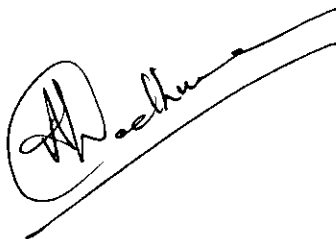
Per: Archana Wadhwa:

The entire confirmed demand of Rs.72,306/- already stands deposited by the appellant alongwith interest. Accordingly, we waive the condition of pre-deposit of penalty and proceed to decide the appeal itself inasmuch as the appellant is not contesting the confirmation of demand and interest and is only praying for setting aside the penalty.

2. It is better to reproduce the relevant para of the impugned order of Commissioner (Appeals):

"5.3 I observe that vide notification No. 23/2007 ST dated 22.5.2007, levy of service tax was introduced on renting of property service by virtue of clause 65(105)(zzzz) read with section 65 (90a) defining taxable service w.e.f. 1.6.2007. In the Finance Bill, 2010 by virtue of para 76, validation law was introduced whereby the verdict of any court, pronouncement was declared to be redundant and the levy was held to be constitutionally valid with retrospective effect w.e.f. 1.6.2007. The provisions of Finance Bill were enacted on 8th May, 2010 and the clause 77 of the Act of 2010 brought into force the validation laws pertaining to renting of immovable property to be valid and applicable with retrospective effect. The Finance Bill, 2010 has made an amendment in the definition of the taxable service 'Renting of immovable property' section 65(105)(zzzz) to provide that the activity of 'renting' itself is a taxable service. This change was given effect to with retrospective effect from 1.6.2007".

3. It is seen that there was some dispute going on about the taxability of ~~renting~~^{renting} of immovable property before various Courts. One such reference can be made to dispute before the Hon'ble High Court of Delhi in the cases of **Home Solution Retail India Limited**. The above reproduced para also shows that there was some retrospective amendment.

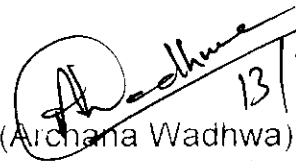


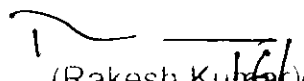
4. We also note that Section 80 was amended and a new provision of section (2) was introduced laying down which is reproduced below:

"(2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President".

5. In terms of the said section, if the service tax alongwith interest stands paid within a period of six months from the date on the Finance Bill, 2012 received the assent of the President, no penalty shall be imposed on the assessee. The appellant in the present case has deposited the service tax alongwith interest on 03.12.2011 and 25.05.2012. As such the said provision is fully applicable to the facts of the present case. We also note that the Tribunal in the case reported as 2013 (32) STR 642 (Tri. Ahmd.) under similar circumstances has set aside the penalty imposed upon the appellant under all the sections of the Finance Act.

5. In view of the above, while confirming the demand of service tax and interest, as not contested by the appellant, we set aside the penalty imposed upon the appellant. Stay petition as also appeal get disposed of in above manner.


(Archana Wadhwa)
Member (Judicial) 13/1/14


(Rakesh Kumar)
Member (Technical) 16/1/14

Pant