

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

CUSTOMS APPEAL BRANCH

Appeal No. ST/291 /2006, ST/MISC/275/08

Date 10/04/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SANDEEP SOBTI
161/8, RAJPUR ROAD, DEHRADUN (UA)

M/S SANDEEP SOBTI

THE COMMISSIONER (APPEALS) CUSTOMS AND
CENTRAL EXC

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/74/08 Customs dated 02.04.08
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax



Assistant Registrar

(Customs Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER (APPEALS) CUSTOMS AND CENTRAL EXC
CUSTOMS AND CENTRAL EXCISE DIVISION, MEERUT

2. Adv. / Consult

Sh. BL Seth, Adv
C/O Appellant

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7. M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9. Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10. Nidheshak publications, I.P.Estate, new Delhi

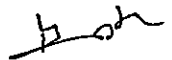
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file



Assistant Registrar

(Customs Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Service Tax Appeal No. 291 of 2006 with
Service Tax Misc. Application No. 275 of 2008**

(Arising out of Order-in-Appeal No. 58-CE/MRT-I/2005 dated 20.04.2006 passed by the Commissioner of Central Excise (Appeals-I), Meerut).

DATE OF HEARING : 02.04.2008
DATE OF DECISION : 02.04.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, 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 ?.	NO
2.	Whether it should be released under Rule 27 of the 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

M/s Sandeep Sobti

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Appellants

(Rep. by Sh. B.L. Sethi, Adv.)

VERSUS

CCE, Meerut

....

Respondent

(Rep by Sh. Amit Jain, DR)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

Final ORDER NO. 59/74/08

PER M. VEERAIYAN :

This is an appeal against the order of the Commissioner (Appeals) dated 20.04.2006.

2. Heard both sides.

3. The relevant facts, in brief, are as follows.

(a) The Department received details from M/s VSNL regarding services rendered by the appellant and amount of service charges paid by M/s VSNL to the appellant for the said purpose.

(b) The appellant was issued letters seeking clarifications and in reply they stated that they are not renting cab, but hiring vehicles; and that they are not licence holder but permit holder.

(c) The Department issued a show cause notice proposing demand of tax under 'Rent-a-cab Scheme Operator' amounting to Rs. 54,463/- and proposing penalties. The appellant did not give any reply and did not appear before the Original Authority.

(d) The Original Authority vide its ex parte order dated 28.04.2005 confirmed a demand of Rs. 54,463/- along with interest and also imposed penalties under various Sections. The

Commissioner (Appeals) has upheld the order of the Original Authority.

3. The learned advocate appearing for the appellant submits that the appellant was not having any motor cabs or maxi cabs and they were running only two buses – one 42 seater and another 52 seater, and they were giving on hire to VSNL for transportation of their staff from Dehradun to the place of working. He contends that running buses on hire shall not come under 'Rent-a-cab Scheme Operator' and, therefore the order of the Commissioner (Appeals) is not legal and proper.

4. The learned DR submits that the appellant has not been cooperating in the inquiries; the show cause notice was issued only based on the information received from VSNL; and the matter was adjudicated ex-parte as no reply was been given to the show cause notice. The present submission that the vehicles used by them are not motor car or maxi cab but are buses requires factual verification. He pleads the matter to be remanded to the Original Authority with the direction that the appellant furnishes their relevant details and he also seeks permission to charge duty under 'Tour Operator Scheme' in case the services fall under the said category.

5. We have carefully considered the submissions from both sides. The show cause notice has been issued without

benefit of any details furnished by the appellant and has been decided without benefit of reply being received from the appellant. The evidence sought to be relied upon by the appellant now is, prima facie, relevant and requires to be gone into by the Original Authority. Under these circumstances, we deem it proper to set aside the orders of the lower authorities and remand the matter to the Original Authority for fresh consideration. We leave all the issues open. We direct the appellant to file written submissions along with evidence proposed to be relied upon by them within 45 (forty five) days from the date of receipt of this order and the Original Authority shall decide expeditiously thereafter within two months from the date of expiry fixed for filing the written submissions. The Department is also directed to check up the factual position from the RTO authorities regarding category /type of the vehicles used by the appellant during the relevant time.

6. The appeal is allowed by way of remand on the above terms.

(Dictated and pronounced in the open Court on the 2nd day of April, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)