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

Appeal No. ST/144 /2008-145 /2008, ST/STAY/517-518/08 Date 13/05/2008

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

To :
FRIENDS TOUR & TRAVELS
R.P.COMMERCIAL COMPLEX,
MAIN DADRI ROAD,
BAROULA SECTOR-49,
NOIDA (U.P.)

FRIENDS TOUR & TRAVELS Appellant
Vs
C.E.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order** No. ST/79-80/08 Customs dated 06.05.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alongwith Stay Order No ST/157-58/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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 Publictions (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
16. SH. SATVEER SINGH, PROPRIETOR
M/S FRIENDS TOUR & TRAVELS,
R.P.COMMERCIAL COMPLEX,
MAIN DADRI ROAD,
BAROULA SECTOR-49,
NOIDA (

Assistant 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
Service Tax Stay Application No. 517-518 of 2008 in Appeal No. 144-145 of 2008

[Arising out of the Order-in-Appeal No. 4-5/CE/Noida/2008 dated 11/01/2008 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut – II, Noida.]

For Approval and signature :
Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri P.K. Das, Member (Judicial)

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 would 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 Department Authorities?	: Yes

M/s Friends Tour & Travels & Ors. — Appellant

Versus

CCE, Noida — Respondent

Appearance

Shri S. Malhotra, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

DATE OF HEARING : 06/05/2008.

Final Order No. ST/79-80/08 Dated : 6/5/08
Stay Order No ST/157-158/08

Per. M. Veeraiyan :-

We heard both sides on the stay petitions for a while. As a short point is involved, we thought it fit that the appeals themself could be finally disposed of and accordingly waived pre-deposit of the dues as per the order of Commissioner (appeals) and proceed to hear the appeals.

2. Original Authority confirmed demand of service tax of Rs. 28.64 lakhs approximately from the appellant firm on two services. On the services as tour operator a sum of Rs. 17.50 lakhs approximately stands demanded and under the head rent a cab a sum of tax amounting to Rs. 11 lakhs approximately stands demanded. He also imposed penalties under various sections on the appellant firm and the other appellant.

3. On appeal to the Commissioner (Appeals), Commissioner (Appeals) ordered 50% of the duty confirmed as pre-deposit and the stay order was not complied with by the appellant who sought for modification of the stay order on the ground that substantial portion of the demand relating to the service of tour operators is not payable in view of 11 C notifications dated 4th April 2007 which covered the period from April 2000 to 4th February 2004. The learned advocate also submits that the nature of operation undertaken by them will not qualify for levy of the service tax under rent a cab scheme. However, these aspects have not been gone into by the Commissioner (Appeals) as he has disposed the appeal on failure to comply with the order of pre-deposit.

After taking into accounts the submissions made by the learned advocate, we direct the appellant firm to deposit a sum of Rs. 5 lakhs within eight weeks from today and to report compliance to the Commissioner (Appeals) on **10th July 2008.** Subject to ascertaining compliance, the Commissioner (Appeals) will proceed to hear the appeals on merit and disposed it off with out insisting on further deposit from the appellants. In the event of none compliance of this order, the Commissioner is free to dismiss the appeals on this short ground. We clarify that we have expressed no opinion on the merits of the case.

4. Appeal is disposed off on the above terms; stay petition is also disposed off.

(Dictated and pronounced in open court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

PK