TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. ST/363 /2006 Date 18/07/2008

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

To :
JAYASWAL TRAVELS
24/3,SAHARANPUR ROAD,DEHRADUN.

JAYASWAL TRAVELS Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/137/08 Customs dated 03.07.08 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
   C.C.E. MEERUT I
   EXCISE CHOWK. UNIVERSITY ROAD. MANGAL PANDEY NAGAR. MEERUT - 250005.
2. Adv. / Consult
   MR.P.R.MULLICK
   27-RACE COURSE.DEHRADUN.
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

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

SERVICE TAX APPEAL No. 363 of 2006

[Arising out of Order-in-Appeal No. 60/CE/MRT/I/06 dated 24.4.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. 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 Departmental authorities?	

M/s. Jayaswal Travels — Appellants

Vs.

CCE, Meerut-I — Respondent

Appearance:

Shri R.P. Mullick, Advocate for the appellants;
Shri A.K. Madan, Departmental Representative, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 3rd July, 2008

FINAL ORDER NO. ST/137/08 **dated** 3-7-08

Per S.S. Kang:

Heard both sides. Appellants filed this appeal against the impugned order whereby demand of service tax was confirmed on the ground that the appellants are providing tour operator service.

2. Brief facts of the case are that show cause notice was issued to the appellants for demand of service tax on the ground that they are providing taxable service of Rent-a-cab. In reply to show cause notice the appellants submitted that they are having 42 or 52 seater buses. The adjudicating authority, after considering the reply, confirmed the demand on the ground that the appellants are providing tour operator service. The Commissioner (Appeals) upheld the adjudication order.

3. The contention of the appellant is that show cause notice issued by treating the appellants as provider of Ren-a-cab service. Therefore, the impugned order confirming the demand as provider of tour operator service is beyond the scope of show cause notice.

4. The appellants also argued on merit. Contention of the appellants is that as per definition of tour operator during the period in dispute

means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act or the Rules made thereunder. Tourist vehicle as per Motor Vehicle Act means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. Contention is that the appellants are having contract carriage permit and not tourist permit. Therefore, demand is not sustainable. Appellants also relied upon the decision of the Madras High Court in the case of Secty. Federn. Of Bus Operators Assn. of T.N. vs. U.O.I., reported in 2001 (134) ELT 618. The appellants also submitted that for the subsequent period the adjudicating authority dropped the proceedings vide order dated 28.3.2008 initiated on the same ground.

5. Contention of the Revenue is that the appellants are having contract carriage permit and contract carriage which is adapted tourist vehicle is covered under the tourist permit as the appellants' buses are being used for various customers. Therefore, the appellants are providing service of tour operator.

6. We find that in this case show cause notice was issued demanding service tax on the ground that the appellants are providing service of Rent-a-Cab. The adjudicating authority held that appellants are providing service of tour operator. The Commissioner (Appeals) upheld the finding of the adjudicating authority. We find that show

cause notice was issued demanding service tax on the ground that the appellants are providing Rent-a-Cab service, therefore, confirmation of demand on the ground that the appellants are providing tour operator service is beyond the scope of show cause notice.

7. Even on merit the appellants are having contract permit for vehicle which are with the VSNL for carrying their employees. The Hon'ble Madras High Court in the case of Secty. Federn. of Bus Operator Association of T.N. vs. UOI (supra) has held as under:-

"14. At this juncture, it will be seen that as per Section 2(43) of the Motor Vehicles Act, the Motor Vehicles Rules specifically provide the conditions for a vehicle being recognized as "tourist vehicle' under Section 2(43). We can conveniently refer to Rule 128 of the Motor Vehicles Rules, which provides the conditions for a tourist vehicle other than motor cabs, maxi-cab, camper's van, house trailer which a tourist vehicle shall conform to. Number of specifications are given in that rule in respect of dimensions, structure, door arrangement, ventilation, luggage space, seating arrangement, painting and furnishing, lighting, fitting and accessories, etc. In short, Rule 128 specifies the standard of comforts which are required to be there in a vehicle for being recognized as the "tourist vehicle" under the Central Motor Vehicles Rules. We have, therefore, no hesitation first to hold that the first and foremost condition for a person to be held as a 'tour operator' within the meaning of Section65(52) of the Finance Act is that he must be engaged in the business of operating tours in a 'tourist vehicle' in terms of Section 2(43) of the Motor Vehicle Act and in no other type of vehicle and, therefore, necessarily such vehicle must conform to the conditions prescribed under Rule 128 of the Central Motor Vehicles Rules."

In view of the above decision as the appellants are not having tourist Vehicle ~~permit~~ as per requirement. Therefore, demand is not sustainable, hence, set aside. Appeal is allowed. Appellants are entitled for consequential relief, if any, in accordance with law.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 7th July, 2008
RK