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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/360 /2006 - CU[DB]

Date 20/10/2008

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

To :
M/S SURYA TOURS & TRAVELS
9/172,DILIP BHAWAN,SHIVPURI,HATHI BHATA,AJMER.

M/S SURYA TOURS & TRAVELS Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/275/08 **CU[DB]** dated 08.10.08 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. JAIPUR II
   NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR.
2. Adv. / Consult
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 - 3
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
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. Office Copy
16. Guard file

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. II
Service Tax Appeal No. 360 of 2006

[Arising out of the Order-in-Appeal No. 201 (HKS) ST/JPR-II/ 2006 dated 12/04/2006 passed by The Commissioner (Appeals-II), Central Excise, Jaipur – II.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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 Department Authorities?	:

M/s Surya Tours and Travels — Appellant

Versus

CCE, Jaipur - II — Respondent

<u>Appearance</u>

None – for the appellant.

Shri L.B. Yadav, Authorized Representative (DR) - for the Respondent.

CORAM: **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 08/10/2008.

Final Order No. ST/275/08 Dated : 8/10/08

Per. S.S. Kang :-

Heard learned SDR. Appellant filed a written submission and made a request to decide the appeal on merit. The demand of service tax was confirmed on the ground that appellants are providing the service of rent a cab, whereas the case of the appellant is that they are not renting a cab but only taxi on hire basis and charges are made for each paid depending on the distance the travel. We find that this issue is already settled by the Tribunal in the case of **R.S. Travels vs. CCE, Meerut** reported in **2008 (87) R.L.T. 878 (CESTAT – Del.).** The Tribunal held as under :-

> "3. We have carefully considered the submissions from both the sides. The point of dispute in this case is whether giving cabs on hire on demand basis, for which the charges from the client are made on the basis of per k.m. rate, is covered by the definition of rent-a-cab scheme operator's

service, as defined under Section 65 (91) of the Finance Act, 1994. The period of dispute is from 01/04/2000 to 31/03/04. According to the Appellant, the very words – 'rent a cab scheme operator' suggest that the owner of the cab temporarily parts with the possession of the vehicle for a consideration and during the period of renting, the vehicle is at the disposal of his client and that this scheme would not cover when the service being provided to a client is a pure transport service for which the vehicle is given on demand and the billing is done on the basis of per k.m. rate and at no point of time the vehicle is under the control of the client. The Revenue's contention, relying upon the Tribunal's decision in case of **Express Tours and Travels Pvt. Ltd.** (supra) is that the Government's intention is to tax the provider of a service which involves hiring and renting of cabs formally for a longer period and that the Appellant's activity would be covered by the definition of rent a cab scheme operator's service.

4. Rent a cab scheme operator's service had been brought within the service tax net in the year 1997 and at that time the expression "rent a cab scheme operator" had been defined in Section 65 (32) of the Finance Act, 1994, as a person who is holder of a licence under rent a cab scheme, 1989 framed by Central Government under Motor Vehicle Act, 1988. As per rent a cab scheme 1989, a person for holding a licence for this scheme should have at least 50 motor cabs. With effect from 16/10/98, the definition of 'rent-a-cab scheme operator' was amended and as per the amended definition, 'rent a cab scheme operator' means any

person engaged in the business of renting of cabs. Thus the effect of the amendment was that any person engaged in cab scheme, 1989, would come under the service tax net. But after this amendment, except for doing away with the licencing requirement, the basic character of the service would not change. From the perusal of rent a cab scheme, 1989 framed by Central Government under Motor Vehicle Act, 1988, it is clear that this scheme involves giving the cabs on rent to a client and during period of renting, the vehicle is at the disposal of the client.

5. Moreover, what is taxable is the activity of renting of cabs by a rent a cab scheme operator. Ordinary meaning of the words "to rent" is allowing the use of something one owns in exchange for payment. Therefore the test for ascertaining whether an activity is covered by the entry "rent-a-cab operator's service" is as to whether it involves giving the cab, with or without driver, to a client for a certain period of time for some consideration, which can be on per hour or per day or per month basis, with a cap on the total run of the vehicle during the period of renting, if the cab operator also provides the fuel, and during the period of renting the vehicle is at the disposal and under the control of the client – he may use it to the maximum extent permissible or even beyond on payment of extra charges or he may not use it at all. However when a cab operator provides his cab with a driver to his client on demand for going from one place to another and charges him on per kilometer basis or a lump sum amount based on distance, as fixed with the client and control of the vehicle always

remains with the cab operator/driver, he is providing transport service and this activity would be outside the purview of the entry – 'rent a cab operator's service'."

2. In the present case as appellant is not providing the service of rent a cab, therefore, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK