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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/107 -108/2007 - CU[DB] Date 07/11/2008

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

To :
C.C.E, MEERUT-I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT-250005

C.C.E, MEERUT-I Appellant
Vs
HIGHWAY MOTORS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ~~[illegible]~~ ST/329-30/08 **CU[DB]** dated 06.10.08 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
   HIGHWAY MOTORS
   69 GANDHI ROAD, DEHRADUN
2. Adv. / Consult Sh. PR Mullick, 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 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-1
15 Office Copy
16 Guard file

17. M/s Adarsh Trading Co.
    54 Ashat Bazar Dehradun

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/107 & 108/07

[Arising out of Order-in-Appeal No.277-78/CE/MRT-I/06 dt.12.12.06 passed by the Commissioner of 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 Department Authorities:	:

CCE, Meerut — Appellant

Versus

M/s. Highway Motors
M/s. Adarsh Trading Co. — Respondent

Appearance

Shri Fateh Singh, Authorised Departmental Representative(DR) For appellant
Sh. P.R.Mullick,Adv. for respondent

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 6.10.08
Order No. ST/3[illegible] - 330/08

Per S.S.Kang:

Common issue is involved, therefore, these appeals are taken up together. The revenue filed these appeals against the impugned order whereby Commissioner(Appeals) held that the respondents are not providing the service of tour operator. The Commissioner(Appeals) after going through the evidence on record held that in view of the evidence produced by the respondent by way of ~~received~~ certificate of Regional Transport Authority, Dehradun to the effect that the buses, in question, are ordinary buses and ~~they~~ are operated as 'contract carriage' or 'stage carriage', the respondents buses can not be categorised as tourist vehicles.

2. The contention of the revenue is that as the respondents are organizing tour, therefore, they are providing service of tour operator. It is also submitted that Commissioner(Appeals) relied upon the decision of the Tribunal in the case of Usha Breco Ltd. vs CCE reported in 2006(4)STR.88 and revenue has filed a reference application before the Hon'ble High Court. The revenue relied upon the decision of the Hon'ble High Court of Madras in the case of Secy. Federn. Of Bus-operators Assn. of T.N. vs UOI reported in 2001(134)ELT.618(Mad.).

3. The contention of the respondent is that the buses, in question, are not tourist vehicle as provided under Rule 128 of Central Motor Vehicles Act,1989. As per the Motor Vehicles Act,1988 'tourist vehicle' means a 'contract carriage' constructed or adapted and equipped and maintained in accordance with such specification as may be prescribed in this behalf.

In the present case, there is no evidence on record to show that the buses, in question, are constructed or adapted and maintained in accordance with such specification. The respondent relied upon the decision of the Tribunal in the case of CCE vs Gandhi Travels reported in 2007(6)STR.430. It was followed in the case of Gatulal V.Patel vs CCE reported in 2007(7)STR.426.

4. We find that in the present case, there is no evidence that vehicles, in question, are tourist vehicles. As tourist vehicles means a 'contract carriage' constructed or adapted and maintained in accordance with such specification as prescribed. The decision relied upon by the Revenue in the case of Secy. Federn. of Bus-operators Assn. of T.N.(supra)Hon'ble High Court in para 14 held as under:

> "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 Section 65(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 Vehicles 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".

5. In the present case that there is no evidence to show that the buses, in question, are tourist vehicles as provided under Section 2(43) of the Motor Vehicles Act. In similar situation, the Tribunal after considering the decision of the Hon'ble Madras High Court held that tourist vehicle to be as per provisions of "Motor Vehicles Act and Rules and when vehicle is not covered by the description of tourist vehicle and not run as such

person concerned not covered under the scope of tour operator. In view of the above discussion, we find no infirmity in the impugned order. The appeals are dismissed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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