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/182 /2007 - CU[DB]
ST/CO/112/07

Date 03/12/2008

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE — Appellant

Vs

M/S GAYATRI ENERPRISES — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/395/08 **CU|DB|** dated 02.12.08

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
M/S GAYATRI ENERPRISES
94, PINTO PARK, GWALIOR (M.P.)
2. Adv. / Consult
MR.S.K AGGARWAL
92,SHREE KESHAV SADAN SHANTI NAGAR, BEHIND TRIVEDI NURSING HOME NAISARAK, GWALIOR
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), Thyagarava 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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

In Service Tax Appeal No.182 of 2007-Customs Br.
Service Tax Cross Objection No.112/2007-Customs

[Arising out of Order-in-Appeal No.IND-I/02/2007 dated 05.01.2007 passed by the Commissioner (Appeals-I), Central Excise, Indore]

Date of Hearing/ Decision:02.12.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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? :

CCE, Indore ...Appellant
[Rep. by Shri S.K. Agarwal, Consultant]

Vs.

M/s. Gayatri Enterprises ...Respondent
[Rep. by Shri Sumit Kumar, DR]

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

Final Order No.ST/395/08/Dated:02.12.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondent provided their vehicle to M/s. Vikram Woollens, Mallanpur for transporting their employees from Gwalior to Mallanpur. It has been

alleged that the respondents were engaged in providing taxable service in the category of "Tour Operator Service". The Adjudicating Authority confirmed the demand of tax of Rs.1,37,951/- and imposed penalty of equal amount. The Commissioner (Appeals) set aside Adjudication Order. Hence, Revenue filed this appeal.

2. After hearing both the sides and on perusal of the records, we find that the main contention of the respondent is that the vehicle in question is falling under the category of private bus under Section 76 of Motor Vehicles Act. In this connection, the ld. Counsel on behalf of the respondent drew the attention of the Bench to the copy of the Registration Certificate issued by the Motor Vehicles Department. It is also contended that the vehicle in question is granted permission under the category of "Private Service Vehicle" under Section 2 (33) of the Motor Vehicle Act.

3. Ld. DR on behalf of the Revenue relied upon the decisions of the Hon'ble Madras High Court as under:-

(1) Secretary Federation of Bus-Operators Association of Tamil Nadu Vs. Union of India reported in 2006 (2) STR 411 (Tribunal-Mad.)

(2) Sri Pandyan Travels Vs. Commissioner of Central Excise, Chennai 2004 (163) ELT 409 (Madras)

4. We find that this issue has been decide by the Tribunal in the case of Commissioner of Central Excise and Customs, Vadodara-II Vs. Gandhi Travels reported in 2007 (02) LCX0051. The relvant portion of the said decision is reproduced below:-

> "7. Coming to the judgement cited by the learned SDR, we find that the Hon'ble High Court of Madras in the case of

Secretary, Federation of Bus-Operators Association of Tamil Nadu (supra) in para 14 has held as under:-

> "We have, therefore, no hesitation first to hold that the first and foremost condition for a person to be held as "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."
>
> Their Lordships have categorically held that first to hold for a person to be considered a tour operator, he must be operating a tourist vehicle in terms of Section 2(43) of the Motor Vehicle Act read with Rule 128 of Central Motor Vehicle Rules. The evidence produced before the lower authorities and before us indicate that the respondent is not operating "tourist vehicles" as per Section 2(43) of Motor Vehicle Act, read with Rule 128 of Central Motor Vehicle Rules."

8. The judgement relied upon by the learned SDR in the case of Sri Pandyan Travels (supra) would in fact support the respondent's case, as correctly contended by the learned Advocate. We may reproduce the observation of the High Court, which is as under:-

> "inasmuch as the petitioner is a contract carriage operator and not a stage carriage operator, the observation of the Division Bench in respect of "spare buses of stage carriages" is not applicable. It is also relevant to refer once again the observation in Para 41". In fact, the most of the petitioners, who are having the contract carriage, are having the permits, under Section On the reading of the above reproduced portion of the judgment of the Hon'ble High Court it can be sent hat the Hon'ble High Court came to the conclusion based on the fact that the petitioner therein were holding permits under Section 88(9) of the Motor Vehicle Act, read with

Section 82. The provisions of Section 88(9) of the Motor Vehicle Act reads as under:-

> "(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being les than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of Section 73, 74, 80, 81, 82, 83, 84, 85, 86 of sub-section (1) of Section 87 and Section 891 shall, as for as may be, apply in relation to such permits."

A plain reading of the above Sub-section would indicate that tourist permit is granted to an operator if he has tourist vehicles. Hence, the tourist vehicle has to be read in line with the Section 2 (43) of Motor Vehicles Act and Rule 128 of Central Motor Vehicles Rules. We have already held that the respondent's four vehicles did not answer to the description of 'tourist vehicles'."

88(9) of the Motor Vehicles Act read with Section 82, which are nothing but tourist "tourist permits" issued for the purpose of promoting the tourism and obviously issued to the tourist. Whereas contemplated under that section. Therefore, there will be no question of entertaining their objections and they will straightway be covered under Section 65(52) of the Finance Act"

5. We agree with the findings of the Tribunal in the case of Gandhi Travels (supra). In view of that, we do not find any reason to interfere the

order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected. Cross objection is disposed of.

Order dictated & pronounced in open court on 2.12.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.