

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

Appeal No. ST/351 /2007-SM[BR]

Date 25/01/2008

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

To :
M/S ABHISHEK TOURS & TRAVEL
C/O, MRS. ANJU SHARMA, PROPRIETOR, MAIN
DADRI ROAD, ATTA, SECTOR-27, GAUTAM BUDH
NAGAR, U.P.

M/S ABHISHEK TOURS & TRAVEL

Appellant

Vs

Respondent

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of Final order No. 164/2008-SM[BR] dated 9.1.2008
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. NOIDA

B-123, SECTOR 5, NOIDA.

2. Adv. / Consult

MR.BRAHMADUTTA CHAMBERS OF LAW

111-112, G.C. COMPLEXES, NAYA BANS, SECTOR-15, OPPOSITE NIRULA'S HOTEL, NOIDA.

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 351 of 2007-SM(BR)

(Arising out of Order-in-Original No. 13/AYUKT/2007 dated 12.3.2007 passed by the Commissioner of Central Excise, Noida)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 Abhishek Tours & Travel

Appellant

Vs.

CCE, Noida

Respondent

Appearance:

Shri S.C. Dixit, Advocate

- For appellant

Ms. Archana P. Tiwari, Jt. CDR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 9.1.2008

Final Order No. 164/08 SM (BR) dated 9/1/08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the order in revision passed by Commissioner of Central Excise whereby

the penalty imposed under Section 76 and 78 of the Finance Act were enhanced.

3. The contention of the appellant is that they had now paid the Service Tax along with interest. The contention is that the appellant had not paid the tax on due date as they were under the bona fide belief that they are exempted under Notification No. 3/99-ST dated 28.2.99 being a small service provider. The contention is that the matter was entrusted to their CA to defend their case before the Commissioner of Central Excise. However, the CA could not appear before the Commissioner (Appeals), therefore, ex.parte order has been passed. The contention is that they were under bona fide belief that they are exempted from payment of Service Tax, therefore, as per the provisions of Section 80 of the Finance Act, they are not liable for any penalty.

4. Heard Id. Jt. CDR. The contention is that the appellant never appeared even before the adjudicating authority. The contention is that as the

appellant failed to deposit the tax and failed to file returns on due date, therefore, the penalty was rightly imposed.

5. I find that in this case none appeared on behalf of the appellant before Commissioner of Central Excise. The contention is that the appellant entrusted the matter to their CA who could not appear before the adjudicating authority and now the contention is that they are bona fide belief that they are exempted from payment of Service Tax as a rent-a-cab service provider. In these circumstances, as the amount of Service Tax along with interest has already been paid, I find it is a fit case for re-consideration by the Commissioner of Central Excise regarding enhancement of penalty. The impugned order is set aside and the matter is remanded to the Commissioner of Central Excise to decide afresh after affording an opportunity of hearing to the appellant. The appeal is disposed of by way of remand.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM