

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/449 /2007-SM[BR]

Date 22/02/2008

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

To :
M/S RAJASTHAN TOURS PVT. LTD.
HOTEL RAMBAGH PALACE, JAIPUR

M/S RAJASTHAN TOURS PVT. LTD.

C.C.E. JAIPUR I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.343 /2008 -SM[BR] dated 11.1.2008
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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

2. Adv. / Consult

MR.H.BAJAJ

A-5, BASEMENT LAJPAT NAGAR III, NEW DELHI-110024

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 AND SERVICE TAX APPELLATE
TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Service Tax Appeal No. 449 of 2007 -Single Member Branch

[Arising out of Order-in-Appeal No.64(GRM)ST/JPR-I/2007 dated 13.3.07 passed by the Commissioner of Central Excise & Customs (Appeals), Jaipur-I]

Date of Hearing/Decision: 11.2.2008

Hon'ble Mr. Justice S.N. Jha, 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 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?
-

M/s. Rajasthan Tours Pvt. Ltd.

Appellant

Vs.

Commissioner of Central Excise, Jaipur

Respondent

Appearance:

Mr. Herpreet Singh, Advocate for the Appellant

Mr. Sumit Kumar, Authorized Representative(DR) for the Appellant

CORAM: Mr. Justice S.N. Jha, President

Final Order No. 343/08-sm(BR)

Per Justice S.N.Jha:

This appeal by the assessee is directed against the order of the Commissioner (Appeals) 13.3.2007 upholding the adjudication order of the Assistant Commissioner dated 16.10.2006. By the said order the Assistant Commissioner had directed recovery of service tax credit of Rs.17,528/- under Section 73 of the Finance Act, 1994 read with rule 14(6) of the Cenvat

● Credit rules, 2004 and interest at the applicable rate under Section 75 of the Finance Act, and imposed penalties @ Rs.100/- per day under Section 76 of the said Act and of Rs.17,528/- under Rule 15 of the Cenvat Credit Rules, 2004.

2. The facts of the case briefly stated are these. The appellant is a tour operator. For the tour operator services provided by it from April to September 2004 it availed service tax credit amounting to Rs.17,528/- on mobile phones under rule 3(6) of the Service Tax Credit Rules, 2002. On 4.7.2005 a show cause notice was issued to the appellant for proposed recovery of the said amount and imposition of penalties. The appellant claimed that it was providing output service from mobile phones and rendering the same service as is rendered from telephones installed in the premises and therefore, the benefit of credit was rightly availed under Rule 3(6) of the Service Tax Credit Rules.

3. Sub-rule (6) of Rule 3 of the Service Tax Credit Rules reads as follows :-

"3. Service tax credit--

...

...

...

(6) Service tax credit on the service provided in relation to telephone connection shall be allowed only in respect of such telephone connections which are installed in the premises from where output service is provided".

4. In support of its case some decisions of this Tribunal were pressed into service on behalf of the appellant. The decisions pertain to the period subsequent to coming into force of the Cenvat Credit Rules i.e. 10.9.2004 and have no bearing on the present dispute. It is the admitted position that the Cenvat Credit Rules, 2004 which superseded the Service Tax Credit Rules, 2002 brought about material changes in the matter of availment of

credits, and there is no provision pari materia to rule 3(6) of the Service Tax Credit Rules therein. The question as to whether any output service provided from mobile phone thereafter would qualify for service tax credit, therefore, does not arise. The question is whether for the period prior to 10.9.2004 any service provided as output service from mobile phone is entitled to claim service tax credit.

5. On behalf of the Revenue my attention was drawn to para 2.8 of the Circular of the Central Board of Excise & Customs (CBEC) No.59/8/03-ST dated 20.6.2003 and it may be useful to quote the same verbatim as under :-

"In regard to credit of service tax on telephone connection, queries have been raised as to whether service tax credit would be admissible on telephone sets installed only in the business premises. The answer is in the affirmative, and credit will be allowed only on telephone sets installed in the business premises. Mobile phones are not covered".

In my view, even in absence of the Board's interpretation, the plain language of sub-rule (6) of Rule 3 admits^{of} no doubt that benefit conferred thereunder is available to only those service providers who have installed telephone connection in the premises and provide output services therefrom. The words "install" and "the premises" conclusively show the intention of the frames of the Rules that the service tax credit on output service is available only with respect to telephone connections installed in the (business) premises and not with respect to mobile phones. Mobile phones are not "installed" much-less "in any premises". I, therefore, do not find any merit in the case of the appellant that it is entitled to the benefit of service tax credit in respect of the services provided from mobile phones.

6. Learned counsel then submitted that the authorities committed error in imposing penalty under Section 76 for the reason that the penalty under

● that section can be imposed only on person who is liable to pay service tax and the provision is not applicable in a case where the person claims benefit of credit. The submission has been noticed only to be rejected, for, claiming tax credit is only a corollary of the entitlement or denial thereof and where any person is held not entitled to claim service tax credit, it will follow that he was liable to pay service tax, and that being the position, it cannot claim any advantage in the matter of liability to pay service tax under Section 76.

7. Counsel submitted that penalty under Section 76 may be waived as the appellant was misled into believing that it was entitled to claim the service tax credit. It was submitted that Section 80 provides for such waiver if there is a reasonable cause for failure to pay the service tax. I have considered the submission of the counsel, but having regard to the unambiguous language in the statute, I am unable to accept the same. As observed above the rule does not admit of any doubt that the service provider is entitled to claim credit only in respect of output service provided on telephones installed in the business premises or mobile phones, I do not think that the instant case would fall under the expression "reasonable cause". The plea of the counsel is accordingly rejected.

8. I, however, find substance in the submission as regards the imposition of penalty under rule 15 of the Cenvat Credit Rules, 2004. The Cenvat Credit Rules, 2004 came into force from 10.9.2004. The period in dispute being April to September 2004, the appellant could not be saddled with any liability in terms of the Cenvat Credit Rules. That part of the order, therefore, must be set aside.

9. Learned counsel for the appellant also submitted that three bills amounting to Rs.581/- pertain to the period subsequent to 10.9.2004 when

● the Cenvat Credit Rules came into force. He submitted that as there was no limitation like the one provided in rule 3(6) of the Service Tax Credit Rules restricting the benefit to only fixed line telephones installed in the premises under the Cenvat Credit Rules, the appellant was entitled to claim credit of the amounts paid under those three said bills. This is a question of fact and has been raised for first time. It is, therefore, not possible to either accept or reject the same. The adjudicating authority will verify the contention of the appellant under allow credit of the amounts given to the appellant if so warranted. Needless to say that if the appellant is held entitled to the credit of the said amounts he will be allowed consequential remission of the amount of penalty to that extent.

10. Subject to the above modification in the impugned orders the appeal is dismissed.

[Justice S.N. Jha]
President

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