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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/749 /2007-SM[BR]

Date 14/08/2008

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

To :
M/S KIPPS EDUCATION CENTRE

AJIT ROAD, GALI NO. 9, BATHINDA, PUNJAB

M/S KIPPS EDUCATION CENTRE — Appellant

Vs

C.C.E. LUDHIANA — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1147 / 2008 –SM[BR] dated 28.3.2008

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. LUDHIANA

   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.G.S.BHANGOO

   631 (FF), SECTOR 11B, CHANDIGARH

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 Delhi -
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 60017
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
(SM Appeal Branch)

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

Service Tax Appeal No. 749 of 2007-SM

(Arising out of Order-in-Appeal No. 289/CE/Ldh/2007 dated 25.9.07 passed by the Commissioner (Appeals), Central Excise & Customs, Jalandhar)

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 Kipps Education Centre — Appellant

Vs.

CCE, Ludhiana — Respondent

Appearance:
Shri Vikrant Kackaria, Advocate - For appellant
Shri S.L. Meena, DR - For respondent

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

Date of Hearing: 28.3.2008

Final Order No.....1147/2008-SM(BR)...dated...28.3.08.

Per S.S. Kang:

The appellant filed this appeal against the impugned order whereby amount of Service Tax of Rs.71,696/- was confirmed and penalties were imposed.

2. The only contention of the appellant is in respect of computation of total receipt in respect of commercial coaching service. The contention is that the Revenue officers retrieved data from the computer installed at the premises of the appellant and as per the data retrieved they have received Rs.5,71,700/- from their customer for providing the service and this amount was not disclosed to the Revenue authorities. The appellants are not disputing this aspect. The contention is that before the Income tax authorities, the appellant voluntarily disclosed the income of Rs.3,50,000/- which was suppressed by him. The contention is that this amount is also added to the amounts retrieved from the computer for assessment of Service Tax. The contention is that there is no evidence that appellant received any amount in excess to what is retrieved from the computer, therefore, adding, of Rs. 3,50,000/-- to the assessable value for the purpose of Service tax, is not sustainable.

3. The appellant also submitted that total amounts received from their customers are to be treated as cum-tax.

4. The contention of the Revenue is that the adjudicating authority considered this issue raised by the appellant and rejected the contention of the appellant. As the appellants were suppressed the receipt of the amounts received from their customers for providing the taxable service, hence the same has been added for the purpose of Service Tax.

5. In this case, the data retrieved from the computer shows that the appellant received Rs.5,71,700/- from their customer for providing taxable service and this amount is not in dispute. The only contention of the appellant is that the addition of Rs. 3,50,000/- which was disclosed to the Income Tax department is not to be added for the purpose of assessment of Service Tax. I find that there is no evidence on record to show in addition to Rs.5,71,700/-, the appellant has also received Rs.3,50,000/- from their customers for providing taxable service. In these circumstances, I find merit in the contention of the appellant the Service Tax payable is on the amount i.e. Rs.5,71,700/- which was not disclosed to the Revenue department and the same has been retrieved from the computer installed at appellant's premises. Further, I find merit in the contention of the

appellant and the total receipt of Rs.5,71,700/- are to be treated as inclusive of Service Tax, in view of the decision of the Tribunal in the case of **Rampur Engineering Co. Ltd. Vs. CCE** reported in 2006 (3) STR 650. The amount of Service Tax to be requantified as stated above and the amount of penalty are also to be requantified. The appeal is disposed of as indicated above.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM