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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/312 /2007 - CU[DB] Date 04/05/2009

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

To :
M/S RAJEEV KUMAR GUPTA
69, SCHEME NO. 3, ALWAR.

M/S RAJEEV KUMAR GUPTA Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/141 2009 CU[DB]** dated 26.03.09 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:26.3.2009

Service Tax Appeal No.312 of 2007

Arising out of the order in appeal No.10 (GRM)ST/JPR-I/2007 dated 23.1.2007 passed by the Commissioner (Appeals),Customs & Central Excise , Jaipur.

For Approval and Signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant		Respondent
Rajeev Kumar Gupta	vs.	C.C.E., Jaipur

Appearance:

Shri Rajeev Kumar Gupta (himself) for the appellant
Shri L.B. Yadav, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Oral Order No. S7/141/09

Per M.Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) Dated 23.1.2007 by which the order of the original authority demanding Rs.39,399/- as service tax for the period 10-9-2004 to 31-07-2005 and imposing penalties under Sections 75, 77 and 78 has been upheld.

2. The appellant claims that he is poor and not educated much and that he is not in a position to engage an Advocate and he personally explained his case. Heard the learned DR on behalf of the Department.

3. The relevant facts are that the appellant , in terms of a contract with Eicher Tractors was engaged in preparing and serving food items in the premises of M/s Eicher Tractors. As per agreement, all facilities including space for the canteen, kitchen stores, sleeping room, lunch room, table , stools and other fixtures and also electricity, gas were provided by the Eicher Tractors. The appellant's job was to prepare food items in the premises of Eicher Tractors and supply to their employees during the specified hours and at rates specified by the company. The Contract also provides for payment of advance to the appellant. The original authority has held that the appellant was providing services as outdoor caterer and confirmed demand of service tax and imposed penalties and the said order has been upheld by the Commissioner (Appeals).

4. Learned DR relies on the decision of the Tribunal in the case of Raj Kumar Jain vs. C.C.E., Jaipur I reported in 2008 (89) RLT 100 (CESTAT-Delhi) wherein for the period prior to 16.6.05, the supply of food and beverages by the caterer at the premises of M/s EID Parry and after preparing the said food beverages in the premises given by the company was held to be subject to service tax as outdoor caterer.

5. We have carefully considered the submissions from both sides. In the present case, on perusal of the agreement, we find that the entire facilities relating to maintenance of canteen including furniture, utensils, and also gas, electricity have been provided by the company itself. The appellant has engaged himself merely in preparation and serving all the food items at the company premises. The above aspects have not been appreciated by the authorities below. The activities undertaken by the appellant cannot be held to fall under the category of outdoor catering service. The facts of the case

in Raj Kumar Jain cited supra are entirely different and hence the said decision can not be applied to the facts of the present case.

6. In view of the above, we set aside the impugned order and allow the appeal with consequential relief.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/