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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/780 /2008 – SM[BR] Date 02/03/2009

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S TAJ TOURS & TRAVELS, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 203 / 2009 - **SM[BR]** dated 28.1.2009 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

M/S TAJ TOURS & TRAVELS,

304, FATEHABAD ROAD, AGRA. (U.P.)

2. Adv. / Consult SHRI RAM KUMAR AGARWAL ADV.
C/O RESPONDENT;----------------------

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), Thyagaraya 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-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/780/08-SM

(Arising out of Order-in-Appeal No.319/ST/Appl/KNP/2008 dt.9.7.08 passed by Commissioner(Appeals), Kanpur)

Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

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 Department Authorities:	:

CCE, Kanpur — Appellant

Versus

M/s. Taj Tours & Travels — Respondent

Appearance
Shri S.Gautam, Authorised Departmental Representative(DR) For Appellant
Shri Ram Kumar Agarwal, Adv. For Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 28.1.09
Final Order No. 203/09-SM (BR)

Per Rakesh Kumar:

This is an appeal filed by the Revenue against order-in-appeal No.319/ST/Appl./KNP/08 dt.9.7.08 passed by Commissioner(Appeals), Kanpur by which the Commissioner(Appeals) set aside the service tax demand against the respondent and penalty imposed on him vide order-in-original dt.31.1.08 passed by Asstt. Commissioner of Central Excise, Agra. The facts of this case, in brief, giving rise to this appeal by the Revenue are that the respondent have service tax registration dt.16.9.97 under the category of "tour operator's service" and one of their activity is providing support services like local transport, organizing monument visits, purchase of the rail ticket/air ticket, for the tourist on behalf of the principal agents. During the course of the audit of the respondent's records, the audit was of the view that during the period from Oct.'2000 to April'03, the respondent had not paid service tax amounting to Rs.1,13,969/- on total amount of Rs.23,88,873/- received by them. Out of the total amount of Rs.23,88,873/-, an amount of Rs.1,95,639/- related to the value of taxable services which according to the audit party had not been included in the gross value, Rs.10,06,592/- related to the value of tickets which had been excluded from the gross amount of the bill and Rs.13,77,281/- related to the value of taxable services deducted by the appellant from the gross amount on the ground that the liability to pay service tax on this amount is of the principal agents. It is on this basis that a SCN was issued seeking recovery of the above amount of allegedly short paid service tax alongwith interest, from the respondent under Section 73 read with Section 75 of the Finance Act,1994 and also for imposition of penalty on the respondent under Section 76 and 78 ibid, was issued on 10.3.06. The show cause notice had been issued alleging suppression of fact and invoking extended period. The Asstt. Commissioner vide order-in-original dt.31.1.08 confirmed the service tax demand of Rs.1,13,969/- alongwith interest and besides this, imposed penalty of 1,13,969/- under Section 76 of Finance Act,1994 and another penalty of same amount under Section 78 of the Finance Act. The Commissioner(Appeals) set aside the Asstt. Commissioner's order on the ground that the demand is time barred and that there was absolutely no suppression of any fact or information on the part of the Respondent. It is against this order of the Commissioner(Appeals) that this appeal has been filed by the Revenue.

2. Heard both the sides.

2.1 Shri S.Gautam, Ld. Sr. Departmental Representative assailed impugned order reiterating the grounds of appeal and prayed for restoration of the order-in-original passed by the Asstt. Commissioner. He emphasized that the extended period has been rightly invoked as the full value of the taxable service was not disclosed by the respondent.

2.2 Shri Ram Kumar Agarwal, Advocate, Ld. Counsel for the respondent pleaded that the Respondent organized local tours, monument visits etc. purchase of tickets for the tourists for which the principal operators are billed; that the amount of Rs.10,06,592/- is the amount for buying tickets for the tourists on behalf of the Principal Tour Operators and therefore, this amount had been excluded from the value of the taxable services and that certain amounts in respect of which according to the respondent, the service tax was to be paid by the principal Tour Operators, had also been excluded from the value of taxable services and remarks about exclusion of such amount have been clearly made in ST-3 returns filed by them and the total of such amount is Rs.13,77,281/-; that the respondent had been regularly filing the half yearly ST-3 returns which have been subjected to detailed scrutiny by the jurisdictional Range Supdt. in course of which all the documents including copy of the bank statements, records of the branches, if any, headwise leadger, bill files, bill books, challan books, cash books, statement showing monthwise total business and actual collection of the assessee; with balance amount on which service tax is to be paid etc. had been examined; that from the letters dt.15.12.01 and 10.8.03 of the Range Supdt. to the respondent, it is clear that the above documents had been asked for, that these documents had been produced and Deptt. had examined the same in the course of scrutiny of ST-3 returns; that the Departmental Officers at the time of scrutiny of the returns had accepted non-payment of service tax on the cost of ticket, monument fees etc. reimbursed by the Principal Tour Operators; that in view of this, there is no suppression of any fact or information on the part of the respondent and SCN dt.10.3.06 seeking recovery of allegedly short paid service tax from Oct'2000 to April'03 period is time barred and that taking all these factors into consideration, the Commissioner(Appeals) had rightly set aside the Asstt. Commissioner's order. The respondent at the time of hearing also produced copies of ST-3 returns containing remarks about the exclusion of the amount from the value of taxable service, in respect of which according to the respondent, the Principal Tour Operators were liable to pay the tax.

3. I have carefully considered the submissions from both the sides and have perused the records. From the copies of the ST-3 returns for the six monthly period ending March'01, Sept.01, March'02 and Sept'02, I find that the clear remarks had been made for exclusion of total amount of Rs.13,77,281/- from the value of taxable service on the ground that the tax on this amount was to be paid by the Principal Tour Operators. Therefore, in respect of this amount, the respondent cannot be accused of suppression of fact. As regards the non inclusion of the amount reimbursed for tickets, monument fees etc. it is seen that the ST-3 returns of the respondent had been subjected to detailed scrutiny by the Range Supdt. after going through the respondent's cash book, bill books, bill register, bank statements, statement showing monthwise total business and actual collection of the Assessee with balance amount on which service tax is to be paid etc. This is clear from the letters dt.15.2.01 and 10.8.03 of the Range Sudpt. to the respondent asking for all these records

for the scrutiny of their returns. It is not the case of the Revenue that these records were not produced. When all the records, as required by the Deptt. had been produced by the respondent for scrutiny their ST.3 returns, it would not be correct to accuse the respondent of willful misstatement, suppression of facts etc. I also find that the Commissioner(Appeals)' conclusion that there was no willful ~~statement~~ misstatement, suppression of fact etc. in this case is based on Apex Court judgement in the case of Anand Nishikawa Co. vs CCE, reported in 2005(188)ELT.149(SC), Cosmic Dye Chemical vs CCE reported in 1995(75)ELT.721(SC) and CCE vs HMM Ltd. reported in 1995(76)ELT.497 where it was held by the Apex Court that mere failure to give some information does not amount to willful misdeclaration and there must be some positive act from the side of the Assessee to final willful suppression.

4. In view of the above, I am of the view that there is no infirmity in the impugned order. The Revenue's appeal is dismissed.

(Operative part of the order already pronounced in the open Court).

(Rakesh Kumar)
Member (Technical)

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