TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/852 – 853 / 2008 –SM[BR] E/ CO/ 26- 27 / 2009-SM[BR] Date 21/07/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant
Vs
M/S BINDRA TENT STORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 720 – 721 / 2009 –SM[BR] dated 13.7.2009 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 BINDRA TENT STORE
MODEL TOWN, PATIALA.
[2] M/S PROMPT TENT SERVICE
BHUPINDRA ROAD PATIALA
2. Adv. / Consult SHRI JITENDER MOHAN ADV.
H.NO. 4 STEET NO. (2) GHUMAN NAGAR
SIRHIND ROAD [PB]
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
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Appeals Nos.852-853/08-SM and E/CO/26-27 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.503-504/ce/chd/2008 DATED 29.09.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision: 13.07.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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?	:	No.
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

CCE, Chandigarh ...Appellants

(Rep. by Shri S.N. Srivastava, SDR)

Vs.

(1)M/s. Bindra Tent Service

(2) M/s. Prompt Tent Services ....Respondents

(Rep. by Shri Jitender Mohan, Consultant)

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 720-721/2009-SM(BR)/Dated:13.07.2009

Per P.K. Das:

Revenue filed this appeal against Order-in-Appeal No.503-504/CE/CHD/08 dated 29.09.2008, whereby both the adjudication orders were set aside.

2. The relevant facts of the case as per record, in brief, are that the respondents were engaged in providing taxable service of "Pandal and Shamiana Service". On 6.1.2006, Income Tax Officers conducted survey whereby the respondents No.1 Bindara Tent Store surrendered an amount of Rs.10 Lacs and the respondent no.2, M/s. Prompt Tent Service surrendered Rs.8.5 Lakhs for the financial years 2005-2006. Show cause notices dated 31.1.2007 and 5.2.2007 were issued against the respondents proposing demand of tax on the amount surrendered by them and to appropropriate the amount deposited by them and also to impose penalty along with interest. The Original Authority confirmed the demand of tax of Rs.1,11,385.00 and 1,00,116.00 and also imposed penalties of equal amount. The Commissioner (Appeals) set aside the adjudication Order.

3. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that there is no dispute that the respondents were providing taxable service of "Pandal and Shamiana Service" w.e.f. 10.09.2004. He also submits that the respondents have not obtained any registration certificate for providing taxable service. It is his contention that the respondents surrendered amount of Rs.10 Lacs and Rs.8.5 Lakhs to the Income Tax Authority without explaining the sources of income, which

are implied that the said amounts were generated from Pandal and Shamiana services. Therefore, demand of tax is justified. He also submits that the burden of proof that the amounts were not collected from the business and other sources lies with the respondents.

4. Ld. Consultant on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the respondents had explained that the amount accumulated to earlier six years. He also submits that there is no material available that the said amount is related with the Pandal and Shamiana services. He also submits that the Service tax was introduced on 10.09.2004 and the respondents deposited the amount of tax in connection with the services along with interest, which was appropriated by the Original Authority.

5. After hearing both the sides and on perusal of the records, it is seen that the respondents surrendered the amount to the Income Tax Department during the survey on 6.1.2006. It was explained that whenever surrender of amount was made under the Income Tax Act, it is added to the income in the Assessment Year 2005-06(relevant to the previous year) for the purpose of charging income tax. The amount surrendered represents the established accumulated effect of undisclosed incomes for the earlier financial years since 1999-2000. The Original Authority observed that the respondents failed to produce any evidence regarding income of the said amount shown to the Income Tax

Department that income was from other sources. In this context, the findings of the Commissioner (Appeals) are reproduced below:-

> "8. The main issue in these appeals is whether the income surrendered by the appellants to the income tax department can be taken as the value of taxable service for charging service tax. It is observed that the Hon'ble CESTAT in the final order no.1147-2008-SM (BR) dated 28.03.2008 passed in the case of Kipps Education Centre, Bhatinda Vs. CCE, Chandigarh has held that income voluntarily disclosed before the income tax authorities which was suppressed by the party could not be added to the taxable value unless there is evidence to prove the same.
>
> 9. Service Tax was introduced on Pandal and Shamiana Service w.e.f. 10.09.2004. In such a situation, it is for department to establish that the amount surrendered by the appellants to the income tax authorities related to the taxable service provided during 10.09.2004 to 31.3.2005. This is more significant when both the appellants have submitted before the department that during the same period that had received amounts of Rs.82,000/- and Rs.96,525/- on account of supply of furniture on rent and on these amounts they had deposited Service Tax along with interest. The allegation of the revenue that since the appellants had no other source of income except the service provided by them is an assumption and not a legally sustainable evidence. It has to be supported by evidence, which is not forthcoming in this case. The

burden lies on the department, which is alleging evasion of Service Tax and the same has not been discharged."

6. I find that the entire amount of tax is based on the amount surrendered by the respondent to the Income Tax Department. No inquiry in the nature of recording of statement and otherwise was done. It is seen that the respondents had given an explanation that the amount was accumulated income of the earlier years since 1999. No inquiry was conducted in this regard. It is well settled that the demand of tax cannot be sustained on the basis of mere presumption.

7. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected. Both the cross objections are disposed of.

Order dictated & pronounced in open court on 13.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.