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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/1400/2010 – SM[BR] ST / STAY / 2944/2010-SM[BR] Date **21/12/2010**

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

To :
M/S HERITAGE RESORTS PVT. LTD.
AMANBAGH, AJABGARH, ALWAR, (RAJ.)

M/S HERITAGE RESORTS PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1464/2010-SM[BR]&S/688/2010 dated 6.12.2010 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.PDS LEGAL, ADVOCAT (M)
20TH FLOOR, EXPRESS TOWER,
NARIMAN POINT, MUMBAI-400021.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:06.12.2010

Service Tax Stay Appn. 2944/10-SM in
Service Tax Appeal No.1400/10-SM

[Arising out of Order-in-Appeal No.233(DKV)ST/JPR-1/2010 dated 23rd June, 2010 passed by the Commissioner (Appeal), Central Excise and Customs, Jaipur-I].

Heritage Resorts Pvt. Ltd. ...Appellant

Vs.

CCE, Jaipur-I ... Respondent

Present for the Appellant : None
Present for the Respondent: Shri R.K. Gupta, SDR

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 1464/2010 SM BR/ + S-688/2010 SM BR **DATED:06.12.2010**

PER: D.N.PANDA

None present for the appellant. The appellant has filed an application enclosing a challan for Rs.6,13,176/- exhibiting deposit in HDFC Bank Ltd. on 01.10.10 stating the same to be tax and interest levied in adjudication. The appellant prays for waiver of pre-deposit for the balance demand. There was service tax demand of Rs.4,28,670/- followed by equal amount of penalty under section 78 of the Finance Act 1994 and certain other penalties under section 76 of the said Act. So also interest has been levied.

2. The adjudication order does not disclose determination of the liability under 3 different categories that is rent-a-cab, health club, and fitness centre and tour operator services. The provision of Finance Act 1994 has provided different categories of taxable services for taxing in accordance with law. The adjudication order merely reflects that there was a global assessment under three categories of services. Para 9 of the order shows that the service charges are included in the income of the employee from whom tax is deducted at source. The adjudication made in a sketchy manner does not provide any scope to understand head or tail of the same. The summary assessment not being contemplation of the law, the adjudication should specifically states the nature of taxable service, if any, provided and why that is liable to tax showing proper calculation of taxability under each category of taxable service provided separately.

3. It is surprising that the Appellate Authority also mechanically confirmed the adjudication order without looking into the scope and ambit of the law. Therefore, none of the orders of the authorities below can be approved.

4. In view of the aforesaid observations, dispensing pre-deposit, the matter is remanded to the ld. Adjudicating Authority to determine liability under each category of service separately in accordance with law and there-after determine total liability as well as the quantum of tax, if any, payable. It may also be stated that penalty cannot be mechanically levied without proper finding in the adjudication order. Accordingly,

ld. Adjudicating Authority to whom the matter is remanded should afford proper opportunity of hearing to the appellant and pass a reasoned and speaking order. Consequently, both stay application and appeal are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita