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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/884 /2009 - CU[DB] Date **23/11/2011**

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

To :
C.C.E. MEERUT II

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II Appellant

Vs

M/S SAPAN MEHROTRA, Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/598/ 2011 CU[DB]** dated 16.11.2011 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
M/S SAPAN MEHROTRA,
E-1032, RAJENDRA NAGAR,
BAREILLY.

2. Adv. / Consult : Sh. Ajay Agarwal, Adv
C/o Respondent

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 11.10.2011

Service Tax Appeal No. 884 of 2009

[Arising out of Order-in-Appeal No. 215-ST/MRT-II/09 dated 31.7.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-II]

Coram:
Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

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

CCE, Meerut-II — Appellant

Vs.

M/s Sapan Mehrotra — Respondents

<u>Appearance:</u>

Appeared for Appellant : Shri R.K. Verma, DR
Appeared for Respondent : Shri Ajay Agarwal, Advocate

<u>Coram:</u>
Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. ST/59/11 dated 16/1/11

Per **Mathew John:**

The Respondent is in the business of giving Taxi, Mini Buses, Deluxe Buses and Non Deluxe Buses on hire basis. He had a contract with various units of Indian Army for making available such means of transportation against request. The rates were finalised by calling for tenders from different interested parties and on finalisation of the contract, certain rates were agreed to between the Respondent and the Indian Army. As per the impugned order, the vehicles were to be placed on hire as per the following terms :-

"A. Condition 1 (a) – Civil Taxis - For conveyance of personnel from Bareilly to any location within Indian Territory. (Sic rate is seen missing)

B. Condition 1 (b) – Taxi/Mini Bus/Deluxe Bus/Non Deluxe Buses

(i) Upto 8/6/4hr (with 80/60/40 km) all inclusive;

(ii) Additional charges per km (beyond rates quoted in sub-para (i) above;

(iii) Additional charges per km/hour (beyond rates quoted in sub-para (i) & (ii) above.

C. Condition 2 (c) - Night halt charges beyond 23.00h upto 0600h next day;

D. Condition 3 (e) - Octroi parking and any other taxes levied by the state, Central Government authorities or by local bodies will be borne by the Transporter;

E. Condition 3 (h) – All payments will be made on the basis of actual utilization of the transport irrespective of requisition;

F. Condition 3 (i) - The transporter/supplier may have to make the vehicles available at short notice.

G. Condition 5 - The payment of overtime charges for local duties and outstation will be specific separately for light vehicles."

2. As and when the Army required different types of conveyance a request was made to the Respondent and the Respondent provided the conveyance requested for at the rates agreed to in the said contract. The department was of the view that such service ~~s amount to~~ was rent-a-cab

service as defined under Section 65(105)(o) and the Respondent had to pay Service Tax on the gross amount received from the Army. Accordingly, a Show Cause Notice was issued to the Respondent demanding an amount of Rs.1,33,263/- being Service Tax payable for the period 2005-06 along with appropriate interest. Further, penalties under Section 77 and 78 of the Finance Act, 1994 ~~was~~ were also proposed. On Adjudication, the Adjudicating Authority confirmed demand of Rs.1,33,263/- and imposed penalties on the Respondent under Section 77 and 78 of the Finance Act, 1994. Aggrieved by the order, the Respondent filed an Appeal with the Commissioner (Appeals). The Commissioner (Appeals) relied on the decision of the Tribunal in the case of **R.S. Travels Vs. CCE** reported in (2008) 15 STT 437 (New Delhi-CESTAT) and came to the conclusion that the service provided by ~~them~~ the Respondent does not fall under the category of rent-a-cab service and set aside the order in original No. 150/2008. Aggrieved by the order of the Commissioner, (Appeals), the Revenue has filed this Appeal.

3. The ld. SDR contests that the contract~~s~~ in question ~~are~~ is for long period~~s~~ and not for individual journeys and therefore these services will be covered by Rent-a-Cab service. The Respondent was providing cabs on rent to army and such services are squarely covered by the definition of Rent-a-Cab services. The ld. SDR also relies on the decision of Madras High Court in the case of **Secretary, Federation of Bus Operators Association of Tamil Nadu Vs. UOI** – 2001 (134) ELT 618 (Mad.). He points out that it was held in that case as under :-

> "It would therefore be clear that the moment a vehicle which carries the permit as 'Motor cab' is rented by a person, who is engaged in the business of renting cabs, such person who is so engaged in the business of renting cabs would be in the tax dragnet of service tax".

4. The Respondent has filed cross-objection supporting the arguments given by Commissioner (Appeals) and points out that there is no liability on service provided by him. He further points out that for the year 2005-06 he was eligible for exemption under Notification No. 6/2005-ST dated 1.3.2005 for small service providers and when exemption is given for the first receipts of Rs.4.00 lakhs in that year the tax liability will work out only to Rs.38,496/-.

5. The Counsel further submits that the service provided by ~~him~~ the Respondent is just like the services provided by any taxi-operator on the road who provides services to any person calling for taxi. The only difference is that there is a ~~partly~~ fairly long term agreement regarding rates. The procedure followed by army requires such agreement on rates. The Respondent is not placing any vehicle at the disposal of the army on any long term duration. So the decision of the Tribunal in the case of **R.S. Travels** will apply to the facts of the case and the service tax will not be payable on the service provided.

6. We have considered arguments on both sides. Ordinary taxi-operators on the street are not brought under tax net under the entry for "Rent-a-Cab" scheme. It is this position that is explained with

reasons in the decision of **R.S. Travels** (supra). The facts of this case are akin to the case of taxi operator on the street. Only the rates are for a fairly ~~partly~~ long duration but each of the vehicles are not put at the disposal of army for any fixed duration. So we are in agreement with the reasoning of the Commissioner (Appeals).

7. So the Appeal filed by Revenue is dismissed.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)

RM