14

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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

7

Appeal No. ST/279 /2008 - CU[DB] Date **23/11/2011**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

SMT. JYOTSNA SINGH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/599/ 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
SMT. JYOTSNA SINGH
GH-132, DEENDAYAL
NAGAR,GWALIOR (M.P.)

2. Adv. / Consult : KK ANAND, ADV
A-5(Basement) Lajpat Nagar-III
New Delhi

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

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal No.279/2008 with Cross ST/291/2008

(Arising out of order in appeal No.IND-1/50/2008 dated 22.2.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Indore)

Date of Hearing:12.10.2011

For Approval and signature:

Hon'ble Mr Ashok Jindal, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters 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 lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Indore Appellants

Vs

Smt. Jytsna Singh Respondent

Appeared for the Appellant: Shri K.K. Jaiswal, DR
Appeared for the Respondent: Shri S. Yadav, Advocate

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

Final ORDER No. ST/599/11

Per Mathew John;

The respondent ~~wea~~ was providing catering services, acting as outdoor caterers in the premises of various customers. The Department collected information that ~~they~~ she had provided service to Madhav Institute of Technology & Science, Gwalior (MP) for a gross value of Rs. 7,01,915/- during the period September, 2005 to October, 2006. However, the respondent had not obtained service tax registration and not paid service tax for such services rendered. Accordingly, a show cause notice demanding service tax of Rs. 76,580/- along with interest was issued to the respondent. Further, penalties under various sections of Finance Act, 1994 were also ~~imposed~~ proposed. The respondent did not furnish any reply to the show cause notice and did not appear for personal hearing. Therefore, adjudicating authority came to the conclusion that she had nothing to represent against the show cause notice and confirmed tax amount of Rs. 76,580/-. Further a penalty of Rs. 76,580/- was imposed on the respondent under Section 76 of the Finance Act, 1994.

2. Aggrieved by the order, the respondent filed appeal with Commissioner (Appeals). The respondent stated that during January 2005 to March, 2006, she had received an amount of Rs. 3,57,507/- only which is below the limit of Rs. 4 lakhs for the exemption under Notification No. 6/2005-ST dated 1.3.2005 (exemption for small units). Similarly, from April 2006 to October, 2006, she submitted that she received only Rs. 2,49,720/- which is also below the

exemption limit of Rs. 4 lakhs. She also pointed out that the definition of "Outdoor Catering Services" was amended only from 16.6.2005 to levy tax on services provided from a premises provided by the recipient of the service. The Commissioner (Appeals) accepted the contentions of the respondent and allowed consequential relief.

3. The Revenue contest that the First Appellate Authority has given benefit of Notification No. 6/2005-ST wrongly because the gross value of services provided by the respondent during 2005-2006 was Rs. 3,57,507 according to her own admission and she failed to take out registration which is required to be taken once she crossed the limit of Rs. 3 lakhs. The Revenue further argues that the payment for April, 2005 and May, 2005 (Rs.76,620/-) was received in June, 2005 i.e. after the amendment on 16.6.2005 came into effect and this payment should be taken into account for calculating the limit of Rs. 4 lakhs. So Revenue contests that the duty liability was correctly confirmed by the adjudicating authority. The Revenue has further argued that once she had crossed the exemption limit in 2005-06, she was not eligible for the exemption during the financial year 2006-07.

4. The Counsel for the respondent submits that Revenue had not computed the tax liability correctly at all. He submits that Revenue has not considered the abatement in value available for outdoor catering service to the extent of 50% under Notification No.1/2006-ST dated 1.3.2006. However, this contention was not raised before the lower authorities and there is no proof that the payments received from the Institute was for consideration including that for food supplied which is likely to be not the case.

5. The Counsel also submits that the respondent was eligible for exemption under Notification No. 21/2004-ST dated 10.9.2004 till 1.3.2006 when it was rescinded.

6. We do not see any merit in the argument that value of services rendered when the service was not taxable should be included in the aggregate value of clearance, if such value is received after the service became taxable. Further we do not agree with the contention that non-filing of declaration when the respondent crossed value limit of Rs. 3 lakhs is fatal to the claim of the respondent for exemption under Notification No. 6/2005-ST.

7. On the whole Revenue has mechanically raised demands without looking into exemptions available to the respondent. Considering the fact that the respondent was a small service provider, the Department was duty bound to provide proper guidance.

8. In the facts and circumstances of the case, we do not see any reason to interfere with the order of Commissioner (Appeals). Accordingly, the appeal field by the Revenue is dismissed and cross objection filed by the Respondent is also disposed of.

(Order pronounced in the Open Court).

(MATHEW JOHN)
Member (Technical)
MPS*

(ASHOK JINDAL)
Member (Judicial)