

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/507 & 638 /2007 - CU[DB]

Date 01/12/2011

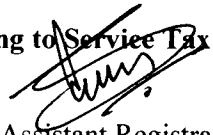
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
C.C.E. KANPUR

Appellant
Vs
Respondent

M/S HEERAPANNA GUEST HOUSE

I am directed to transmit herewith a certified copy of Final order No.ST/615-16/ 2011 CU[DB] dated 29.11.2011 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 HEERAPANNA GUEST HOUSE
TIRANA GARDEN. 97-CANTT, THE
MALL, KANPUR.

2. Adv. / Consult : Mr. K.K. Anand, Adv.
A-5 (Basement)
Lopat Nagar, III
New Delhi - 24

3. C.D.R

4. Bar association. CESTAT. New Delhi

5. Director Publications. Customs. Excise. I.P. Estate. New Delhi

6. M/s Centax Publications 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 (Haryana)

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.
Principal Bench, New Delhi**

COURT NO. III

Service Tax Appeal No. 507 and 638 of 2007

[Arising out of the Order-in-Appeal No. 278/ST/APPL/KNP/2007 dated 31/07/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

For Approval and signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Shri 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 Heera Panaa Guest House

Respondent

and vice-versa

Appearance

Shri Sonal Bajaj, Authorized Representative (SDR) – for the appellant.

Shri S. Yadav, Advocate - for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 04/10/2011.

DATE OF DECISION : 29/11/2011

Final Order No. ST/615-616/11 Dated : 29/11/11

Per. Rakesh Kumar :-

Smt. Sitwat Begum Abas owned Heera Panna Guest House and Tiranga Garden (hereinafter referred to as the appellant). On their application they were issued service tax registration on 30th November 2004 for providing the taxable service of Pandal or Shamiana. Jurisdictional officers on receiving intelligence that the appellant have been providing the services of Mandap Keeper without getting themselves registered and without paying any service tax visited their premises on 22nd February 2005 and resumed some records. On inquiry with the Appellant and scrutiny of the records, it appeared that the services provided by them were Mandap Keeper service which were taxable since 1/7/97 and while during the period from 20th December 2002 to 8th May 2005, they had received total amount of Rs. 64,13,300/- by renting their premises - Heera Panna Guest House and Tiranga Garden to their clients on which their service tax liability alongwith education cess would be Rs. 3,47,937/- they have not paid any tax. On this basis, a show cause notice dated 16/2/06 was issued to the appellant for recovery of non-paid service tax amounting to Rs. 3,47,937/- alongwith interest and also for imposition of penalty on them under Section 76, 77 and 78 of the Finance Act, 1994. The show cause notice was adjudicated by the Deputy Commissioner vide order-in-original dated 8/3/07 by which -

(a) service tax demand as made in the show cause notice was confirmed alongwith interest ; and

(b) penalty were imposed on the appellant under Section 76, 77 and 78 of the Finance Act, 1994.

1.2 The appellant filed an appeal before the Commissioner (Appeals) against this order of the Deputy Commissioner and the Commissioner (Appeals) vide order-in-appeal dated 31/7/07 held that the activity of the appellant was classifiable as Pandal or Shamiana service, under Section 65 (105) (zzw) readwith Section 65 (77a) and 65 (77b) of the Finance Act, 1994, which became taxable w.e.f. 10/9/04. He, therefore, held that the service tax demand for the period prior to 10/9/04 was not sustainable. With regard to the appellant's contention that they were giving their premises to their clients mainly for marriage functions, which is not social functions but a religious functions, the Commissioner (Appeals) held that though during the period of dispute, the definition of Pandal or Shamiana covered a place specially prepared or arranged for organising an official, social or business function, and to clarify ambiguity, as to whether the marriage is a social function or not, an explanation was added in Section 65 (77) w.e.f. 1/6/07 clarifying that for the purpose of this clause, social function includes marriage, even for the period prior to 1/6/07, it cannot be construed by any stretch of imagination that marriage was not a social function.

1.2 Against the above order of the Commissioner (Appeals), while the Department has filed appeal No. ST/507/07 against the portion of the order holding that the appellant's activity is classifiable as Pandal or Shamiana and was not taxable during the period prior to 10/9/04, M/s Heera Panna Guest House has filed appeal No. ST/638/07 against the part of Commissioner (Appeals)'s order holding that even during period to 1/6/07, the marriage was a social function and providing the service in relation to use of Mandap or providing Pandal or Shamiana service for marriage functions was taxable even during the period prior to 1/6/07.

2. Heard both the sides.

2.1 Shri S. Yadav, Advocate, the learned Counsel for the appellant, pleaded that, the appellant were providing light fittings, floor coverings, Pandal or Shamiana on their premises to their clients for organising marriage functions, that these activities of the appellant were covered by the definition of service provided by Pandal or Shamiana contractors, as defined under Section 65 (105) (zzw) readwith Section 65 (77a) and (77b) of the Finance Act, 1994, that just because the premises on which the furniture, fixtures, light fittings, Shamiana etc. was being provided belong to the appellant, it cannot be concluded that the services provided by the appellant were Mandap Keeper services as defined in the Section 65 (105) (m) of the Finance Act, 1994, readwith Section 65 (66) and 65 (67) *ibid*, that since service provided by Pandal or Shamiana contractor became

taxable w.e.f. 10/9/04, the Commissioner (Appeals) has rightly set aside the demand for the period prior to 10/9/04, that even during the period w.e.f. 10/9/04, the service provided by the appellant was not taxable as the Pandal or Shamiana service was being provided in connection with marriage functions, and marriage is a religious function and not a social function, that it is only by adding an explanation to Section 65 (77a) w.e.f. 1/6/07, that a specific provision was made, that for the purpose of this clause, the social function would include marriage function, that this explanation cannot be given a retrospective effect and, therefore, during the period prior to 1/6/07, the marriage function cannot be treated as social function, that in view of this, the Commissioner (Appeals)'s order upholding the service tax demand for the period w.e.f. 10/9/04 is also not sustainable and as such neither any service tax is demandable from the appellant nor any penalty is imposable on them.

2.2 Shri Sonal Bajaj, the learned Senior Departmental Representative, assailed the impugned order dropping the service tax demand for the period prior to 10/9/04 by reiterating the grounds of appeal in the Revenue's appeal and emphasised that since appellant who owned Heera Panna Guest House and Tiranga Garden, were renting out these premises to their clients for marriage functions, where they were also providing the furniture, light fittings, Pandal etc., their activity has to be classified as service in relation to use of Mandap, as defined under Section 65 (105) (m) of Finance Act, 1994 read with

Section 65 (66) and 65 (67) *ibid*, that even during the period prior to 1/6/07 the marriage function is to be treated as a social function and not a religious function, that in this regard, he relies upon the judgment of the Tribunal in the case of **Shree Gujarati Samaj Bhavan vs. CCE, Bhopal** reported in **2006 (4) S.T.R. 60 (Tri. – Del.)**, and that since during the period of dispute, the appellant had provided the services in relation to use of Mandap to their clients for organising marriage functions, their activity was taxable under Section 65 (105) (m) of Finance Act, 1994, during that period and as such the Commissioner (Appeals)'s order classifying their activity as service provided by Pandal or Shamiana contractor is not correct.

3. We have carefully considered the submissions from both the sides and perused the records.

4. There is no dispute that the appellant owned Heera Panna Guest House and Tiranga Garden, where space (Mandap) was being made available to their clients for organising marriage functions and for that purpose, the appellant also provided the furnitures, fixtures, lighting, decorations and catering service. Under Section 65 (105) (m) of the Finance Act, 1994, service provided to a client by a Mandap Keeper in relation to use of Mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, provided as a caterer, was taxable. This service was taxable since 1997. The words 'Mandap' and 'Mandap Keeper' are defined in Section 65 (66) and 65 (67) respectively as under :-

"Mandap means any immovable property as defined under Section 3 of Transfer of Property Act, 1882 and includes any furniture, fixture, light fittings, floor covering therein laid down for organising any official, social or business function."

"Mandap Keeper means a person who allows temporary occupations of a Mandap for a consideration for organising any official, social or business function."

4.1 Thus, a Mandap is an immovable property and the Mandap Keeper is a person who owns such an immovable property and allows its temporary occupation to his customers for a consideration for organising official, social or business function. From the definition of Mandap, it is also clear that during occupation of premises by the client/customers of the Mandap Keeper, the Mandap Keeper may also provide furniture, fixtures, light fittings, floor covering and may also provide catering services during the function. Thus in case of service in relation to use of Mandap, an immovable property is allowed to be used by the customers of the Mandap Keeper for social, official or business function alongwith other facilities like providing of furnitures, fixtures, light fittings, decoration, flour coverings, catering etc., if requested by the customer.

5. Section 65 (105) (zzw) of Finance Act, 1994 defines Pandal and Shamiana service as the service provided to a client by a Pandal or Shamiana contractor in relation to Pandal or Shamiana in any manner and also includes the services provided as a caterer. Section 65 (77a) and 65 (77b) define the terms "Pandal

or Shamiana" and "Pandal or Shamiana contractor" respectively as under :-

"Pandal or Shamiana means a place specially prepared or arranged for organising an official, social or business function."

"Pandal or Shamiana contractor means a person engaged in providing any service either directly or indirectly in connection with the preparation, arrangement, erection or decoration of a Pandal or Shamiana and includes the supply of furniture, fixtures, light or light fittings, floor coverings and other articles of use therein."

6. By campaigning the definition of the service in relation to the use of Mandap and the definition of the service provided by Pandal or Shamiana contractor, it will be seen that while in the former the emphasis is on temporary occupation of Mandap, which is an immovable property under the control of Mandap keeper, by a client for consideration for organising any official, social or business function alongwith other facilities like lighting, providing of furniture, fixture, catering etc. in the latter the emphasis is on preparing a premises chosen by the customer for official, business or social function by providing furniture, fixtures, Pandal, floor coverings lighting and light fittings etc.

7. In the present case, the appellant owned Heera Panna Guest House and Tiranga Garden, whose is temporary occupation was being allowed to the customers for organising marriage functions and for this purpose, besides permitting temporary occupations of the premises they were also providing furnitures,

fixtures, lighting, catering etc. In our view, the activity of the appellant has to be treated as allowing temporary occupation of Mandap for some consideration and has to be treated as service in relation to use of Mandap, which was taxable during the period of dispute. The Commissioner (Appeals)'s order classifying the appellant's activity as the service provided by Pandal or Shamiana contractor under Section 65 (105) (zzw) is not correct and is liable to be set aside.

7. As regards, the second point of dispute as to whether during the period of dispute, that is, during the period prior to 1/6/07, the marriage was to be treated a religious function, not a social function, we agree with the view of the Commissioner (Appeals) that the same has to be treated as a social function, as marriage function, which is held for celebrating the marriage by the married couple with their relatives and friends, is an event different from the event of marriage and the marriage function has to be treated as a social function, without any religious element. Moreover the marriage can be under Special Marriage Act, 1954 without any religious rites. Therefore just because an explanation was added w.e.f. 1/6/07 that for the purpose of this clause, ^{clarifying that} the social function includes the marriage function also, it cannot be concluded that during the period prior to 1/6/07 the marriage function was not a social function. The explanation added w.e.f. 1/6/07 has to be treated ^{as a} clarificatory explanation only.

8. In view of the above discussion, the Commissioner (Appeals)'s order holding that during the period prior to 10/9/04, the appellant's activity was classifiable as service provided by Pandal or Shamiana contractor is set aside and in this regard, the order-in-original passed by Deputy Commissioner is restored. Thus, the Revenue appeal is allowed.

9. As regards, the appeal filed by the appellant, the same for the reasons given above is dismissed and, as such, the Commissioner (Appeals)'s order that even during the period prior to 1/6/07, the marriage function was a social function is upheld.

(Order pronounced in the open court on 29/11/2011)

(Ardiana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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