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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/222 /2007 - CU[DB] Date **05/09/2011**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S ABHINANDAN BANQUETS,(J.K.CLUB COMPOUND) Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/405/ 2011 CU|DB|** dated 26.08.2011 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 ABHINANDAN BANQUETS,(J.K.CLUB COMPOUND)
OPP. G.D.COLLEGE, ALWAR
(RAJASTHAN)

2. Adv. / Consult
MR.M.M.GUPTA,ADV
52,JAMANA DAIRY,SODALA,JAIPUR 302006

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 (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)

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

ST/Appeal No.222/2007

(Arising out of order in appeal No.37/GRM/ST/JPR-I/2006 dated 22.2.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur)

Date of Hearing: 3.8.2011
Pronounced on : 26-08-11

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
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, Jaipur — Appellant

Vs

M/s Abhi Nandan Banquets — Respondent

Appeared for the Appellant: Shri K.K.Jaiswal, SDR
Appeared for the Respondent: None

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. ST/405/11

Per Mathew John:

When the case was called none was present to represent the Respondent. On past many occasions also the Respondent was not present. There is a letter dated 20-01-11 from Respondent on file stating that they have not received copy of the appeal. The letter also states that the Order-in-Appeal states all the reasons why the Appeal filed by Revenue is not maintainable. The letter also states it is too costly to appear for personal hearing in Delhi and the case may be decided on the basis of facts available on records. So we have taken up the case for decision and has gone through the records with the help of Ld. DR.

2. The Respondent is a partnership firm. The respondent had taken on lease from M/s Jai Krishna Club, Alwar (JKC for short), open land with area of approx. 4000 Sqr. Meters. 4 Rooms, a hall, one kitchen, office lobby etc and was letting out the premises for holding functions like marriage, trade fair, conference etc. Revenue was of the view that all such activities are covered by the entry in Finance Act 1994 for Mandap Keeper's Service and service tax is payable on the gross value received for rendering such services. However it was seen that the Respondent was not registered under the relevant Rules and was not paying any service tax. Instead the lessor M/s JKC was registered for payment of service tax and they were paying service tax on the rent paid by the Respondent to the lessor. A Show Cause Notice was issued to the Respondent demanding service tax, on the gross amount of Rs. 33,34,929/- received by the Respondent during the period 1-10-2002 to 30-09-2005, amounting to Rs. 2,66,938/- along with interest. Penalties under sections 76, 77, 78 of the Finance Act, 1994 were also proposed.

3. The adjudicating authority confirmed the demand for the said amount but adjusted the service tax of Rs. 92,030/- paid by the Respondent through M/s JKC and made a demand for additional tax amount of Rs. 1,74,908/- along with interest. Further penalties

under sections 76, 77 and 78 of the Finance Act 1994 were imposed. Aggrieved by the order the Respondent filed an Appeal with the Commissioner Appeal.

4. The Commissioner (Appeals) scrutinized individual invoices submitted by the Respondent and found that some bills were raised for Trade Fair/Exhibition and training. He held that such activities cannot be considered as "business function" and held that for a total value of Rs. 1705760 realised for such functions, service tax is not payable. In this matter he relied on the decision of the Tribunal in the case of India Trade Promotion Organization Vs. CCE reported at 2004 (164) ELT 163- (Tri-Del).

5. Further he found that on some occasion the facility was rented out for events like dance, drama, music, training, conference of club members etc and he held that such events can not considered to be social functions in view of Tribunal's decision in Rangamandira Trust Vs. CCE-2006 (1) STR 30 and held that the value of Rs. 163765/ realized for dance events and Rs. 102134 realized for training are not taxable.

6. The Commissioner (Appeal) further held that the amounts realized by the Respondent should be considered as cum-tax amounts and liability should be reworked on that basis.

7. After making adjustments as per the findings given the Commissioner (Appeal) reduced the net liability of the Respondent to Rs. 16546 only.

8. He reduced the penalties under sections 76 and 78 to Rs. 16546/- each under the two sections section. He reduced the penalty under section 77 to Rs. 500/- and thus allowed the Appeal partially. Aggrieved by the order of the Commissioner (Appeal), Revenue has filed this Appeal.

9. We find that the Tribunal had considered the issue whether renting out immovable property for conducting trade fair is covered by the entry for Mandap Keeper in Finance Act 1994, in the following cases:

(i) India Trade Promotion Organisation Vs CCE-
2004 (164) ELT 163 (Tri. - Del.)

(ii) CCE Vs Tamil Nadu Trade Promotion Organisation-
2005 (184) ELT 370 (Tri. - Chennai)

The Tribunal held that the activity will not be covered by the entry for Mandap Keeper because trade fair is business itself and not a business function.

10. In the case of training conducted in any Mandaps, the Tribunal was of the view that it will be covered by the scope of the expression "business function" as is seen from the decision in Surat Municipal Corpn. Versus CCE-2006 (4) STR 44 (Tri. - Del.)

10. Similarly the Tribunal had considered the issue whether conducting dance programmes will be covered by the entry for Mandap Keeper in the following cases:

(i) Secretary, Town Hall Committee Vs. CCE-
2007 (8) STR 170 (Tri. - Bang.)

(ii) ADA Rangamandira Trust Vs. CCE
2007 (6) STR 381 (Tri. - Bang.).

11. The decision relied upon by the Appellant reported at 2006 (1) STR 30 was at stay stage. The matter has been finally disposed under the decision reported at 2007 (6) STR 381 (Tri. - Bang.), holding that the organizing dances is a social function and is covered by the entry for Mandap Keeper. In an appeal against this decision the Karnataka High Court upheld the decision on taxability as reported at 2010 (19) S.T.R. 648 (Kar.) but remitted the matter to reconsider the issue of penalty.

12. We follow the decisions of the Tribunal discussed above and hold that the rent charged for holding trade fairs is not liable to service tax but the rent received for holding training and dance programs are taxable.

13. The Revenue in its appeal memo has raised certain issues relating to facts and figures and disputes the figures arrived at by Commissioner (Appeal) under each of these heads. So the matter is remitted to the adjudicating authority to decide the amounts correctly after giving an opportunity to the Respondent to present evidence for each item.

14. Further we notice that penalties have been imposed under section 76 and 78 of Finance Act, 1994. Basically these two penalties are for the same offence. Thus position is recognized in Finance Act, 1994 by the 5^{th} proviso added in Section 78 by amendment made through Finance Act, 2008. It is only proper that the principle is applied for matters relating to earlier period also. So we waive penalty under Section 76. Further the Respondent has not been given an option to pay 25% of tax demanded within 30 days of passing the order. While passing the order in remand proceedings such opportunity should be given. Since the Appellant did not get registered under Service Tax Laws and did not file returns, the penalty imposed under Section 77 is maintainable as per the order of Commissioner (Appeals).

15. The Appeal is allowed by remand for deciding the amount of tax and penalties to be decided taking into account the revised tax liability.

(Pronounced on 26-08-11

(ARCHANA WADHWA)
Member (Judicial)

(MATHEW JOHN)
Member (Technical)

MPS*