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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/87 /2006 - CU[DB] Date **20/07/2011**

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

To :
M/S RAVI TOURS & TRAVELS
B-30, OCEAN PLAZA, SECTOR-18, NOIDA (UP)

M/S RAVI TOURS & TRAVELS Appellant

Vs

THE COMMISSIONER CUSTOMS AND CENTRAL EXCISE, NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/285/ 2011 CU|DB|** dated 11.07.11 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
THE COMMISSIONER CUSTOMS AND CENTRAL EXCISE, NOIDA
DEPUTY COMMISSIONER
CENTRAL EXCISE, DIVISION III,
NOIDA

2. Adv. / Consult
MR.V.K.DOGRA, CHARTERED ACCOUNTANT

C/O APPELLANT

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

Date of Hearing: 26.05.2011

Service Tax Appeal No.ST/87/2006-Cus.
[Arising out of Order in Appeal No.90/CE/APPL/NOIDA/05-2389 DATED 26.12.2005 passed by the Commissioner (Appeals), Customs & Central Excise, NOIDA].

M/s. Ravi Tours & Travels ...Appellant

Vs.

CCE, NOIDA ... Respondent

Present for the Appellant : None
Present for the Respondent : Shri B.L.Soni, DR

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

Final **ORDER NO.** ST/285/11 **DATED: 20.05.2011**

PER: D.N.PANDA

The appellant has come in appeal against the order passed by ld. Commissioner (Appeals) upholding the adjudication Order. In the adjudication the matter in controversy was whether appellant shall be liable to service tax for the taxable service of rent-a-cab provided. Adjudication went against the appellant with consequence of levy of service tax of Rs.8,08,838/- followed by consequence of penalty and interest.

2. None present for the appellant today. The appellant has made a request on 16.7.09 to decide the appeal following 3 decisions :-

1. M/s. R.S. Travels vs. CCE, Meerut in appeal No.ST/459/06
2. M/s.Noida Taxi Service vs. CCE, Noida in appeal No.ST/115/2006
3. CCE, Rohtak vs. M/s. Miglani Taxi Service in Appeal No.ST218/2007

3. In the grounds of appeal, the appellant has raised the ground that the authorities below committed error to tax the whole receipt; the authorities have also not allowed any rebate. It had claimed deduction on the fuel supplied, repair and maintenance cost met as well as cost of telephone. Those expenses were not allowed as deduction. In absence of the appellant, we are conscious that the appellant may suffer if appeal consequence is adverse. Therefore, we made a survey to the adjudication order passed by the original authority as well as first appellate finding. The order of adjudication passed demonstrates that the appellant was given opportunity of hearing through its representative on 23.12.04 before the adjudicating authority. All his submissions were considered to pass the order.

4. The authority below examined the statement recorded under section 14 of Central Excise Act 1944 from Shri Amarjeet Singh Natt who was proprietor of the appellant concern. It was stated that vehicles were provided on rental basis to

NTPC, ALSTOM, BHEL, ESCORTS & YAMA since 1998, without seeking registration under Service Tax Law. Ld. Adjudicating authority recorded that the bills were raised in favour of different customers and service tax was realised through account payee cheques but no such tax realised was deposited into Treasury till the date of visit by Investigation Wing. Finding no basis of law, appellant's rebate claim of 30% was disallowed by the Adjudicating Authority.

5. The facts recorded by ld. Adjudicating Authority as above remained uncontroverted before the first appellate authority. No consciousness of the appellant to lead evidence for pleading its innocence and ignorance about law is patent from record. The first appellate authority at page 4 has also recorded that tax was collected by the appellant but that was not deposited in the Govt. Account till Investigation was made. He could not find any merit with the appellant's case, for which he upheld the adjudication.

6. Ld. DR Shri Soni submits that the appellant has relied on certain orders of the Tribunal to decide its case. But none of them is relevant to this case. The appellant was a wilful evader as per the finding of the authorities below. When the appellant did not deposit the tax realised by it, its appeal is devoid of merit and no concession can be given on any count to the appellant and Tribunal may dismiss the appeal.

7. Heard ld. DR and also have depicted our observations from the orders of both the authorities below as above. We are unable to find that the appellant has come out with clean hands to defend its case before the authorities below. Even there is no paperbook filed to show an appellant's defence against liability incurred since no evidence was led before the authorities below for grant of immunity from taxation. In absence of evidence from the appellant to suggest that the appellant has not realised taxes and not enjoyed at the cost of public revenue, finding of authorities below is not impeachable. We did not find any work order or agreement entered into with different customers like NTPC, ALSTON, ESCORT YAMA, BHEL etc. to put the findings of authorities below for testing. In absence of evidence, we are helpless to grant any relief to the appellant. We have no other way but to agree with the concurrent findings of authorities below. Consequently, appeal is dismissed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

Anita