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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/768 /2007 - CU[DB]   Date **20/07/2011**

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

To :
M/S MAHARAJA SAWAI MAN SINGH -II

RAJIV PANDEY, C/O S.D.PANDEY & CO.
CHARGERED ACCOUNTANTS PANDEY CHAMBER,
6, GOPAL BARI, AJMER ROAD, JAIPUR

M/S MAHARAJA SAWAI MAN SINGH -II Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/287/ 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult Mr. Bipin Garg, Adv
B-1/1289-A Vasant Kunj
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 (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. 768/07

[Arising out of Order in Appeal No.158/(GRM) JPR-I/2007 passed by the Commissioner (Appeals-I), Central Excise & Customs, Jaipur-I]

Maharaja Sawai Man Singh II ...Appellant

Vs.

CCE, Jaipur-I ... Respondent

Present for the Appellant : Mr. Garg, Advocate & Ms. Sukriti Das, Advocate
Present for the Respondent : Shri R.K. Verma, D.R.

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

Final **ORDER NO.** ST/287/11 **DATED: 20.05.2011**

PER: D.N.PANDA

The appellant in second appeal has challenged the first appellate order which upheld the adjudication. Appellant's grievance is that the premises which were used for both Mandap Keeper Services as well as film shooting should not be clubbed together, when the purpose of letting out the premises was different. Mandap Keeper service has suffered tax while occupancy of premises for film shooting is not a Mandap Keeper Service for which it is not taxable. Ld. Counsel submits that Mandap Keeper means a person who allows temporarily to occupy of a Mandap for a consideration for organising any official, social or business function. Also Mandap is an immovable property including furniture and fixture as well as light let out for consideration for above purpose. Without the matter being examined, service tax of Rs.78,040/- was imposed followed by consequence of penalty and interest. He also submits that the appellant earns income from the above source and applies that income for charitable purpose. This has been stated to the authorities below in terms of letter dated 13.12.03. The appellant is thus entitled to the relief granted by Tribunal in the case of Commissioner of Central Excise, Chennai vs. Tamil Nadu Trade Promotion Organisation reported in 2005 (184) E.L.T. 370 (Tri.-Chennai). It is also his submission that when the profit element is not there, appellant should not be penalised at all.

2. On the other hand ld. DR supports the order of the authority below submitting that the appellant failed to provide necessary evidence to come to its rescue. In absence of evidence, both the authorities concluded against the appellant.

3. Heard both sides and perused the records.

4. Submission of the ld. DR as to adducing of no evidence is correct when we read page 2 of the adjudication order. The

appellant allowed its premises for use as Mandap and film shooting. It is the contention of the appellant today that if the matter goes back, they will lead evidence. We are surprised that after passing of the adjudication order in 2007, when the appellant failed to lead its evidence, even before first appellate authority, what useful purpose shall be served, if the matter goes back. When the concurrent finding is that no evidence was adduced, the final court of fact usually declines to entertain a fresh evidence at second appeal stage unless the evidence goes to the root of the matter. Application justifying adducing of fresh evidence, relevancy there of and whether such fresh evidence shall alter or affect the case of the other side and relief sought whether shall be just and proper has not been filed. No justification in support of pleading was also established by the appellant. Accordingly, the appellant is handicapped to lead fresh evidence before the Tribunal. ~~leading~~

5. We notice from the citation made by the appellant that the respective receipt was obtained with clear evidence before the authority. The present case is not so.

6. When the appellant has chosen not to adduce evidence its appeal is bound to be dismissed upholding levy of service tax holding that the appellant provided taxable service of Mandap keeper. We order accordingly.

7. So far as penalty is concerned it appears that the law was in infancy stage and the appellant could not segregate its receipt under appropriate head. Further the appellant appears to have pursued charitable object in terms of the letter dated 13.12.2003 addressed to the Superintendent. Making overall assessment that the appellant is a small concern and not aware of process of levy may suffer by the order of penalty passed by the appellant authority below, we, annul entire penalty imposed under different provisions of law under the shelter of section 80 of the Finance Act, 1994..

8. In the result, the appellant gets partial relief to the extend indicated above and appeal is partially allowed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

Anita