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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/586 /2007 - CU[DB] Date **20/07/2011**

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

To :
GOPAL SINGH CHUNDAWAT

UPARLI HAVELI, POST-ASIND, DISTT-BHILWARA
(RAJ)

GOPAL SINGH CHUNDAWAT Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/292/ **2011 CU|DB|** dated 06.07.2011 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
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult

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 AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI
COURT ROOM NO.III

Appeal No.ST/586/2007

(Arising out of the Order-in-Appeal No.433 (HKS)/ST/JPR-II/2007 dated 12.07.2007 passed by Commissioner of Central Excise(Appeals-II), Jaipur.)

For approval and signature of:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE 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 ?	: Yes
2.	Whether it should 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 Departmental Authorities ?	: No

Shri Gopal Singh Chundawat ...APPELLANT(S)

VERSUS

CCE-JAIPUR ...RESPONDENT(S)

APPEARANCE

Ms.Sukriti Das, Advocate FOR APPELLANTS

Shri Amrish Jain, S.D.R. FOR THE RESPONDENTS

CORAM:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE MEMBER (TECHNICAL)

DATE OF HEARING: 06.07.2011

Final **ORDER NO.** S.T./292/11

PER S. S. KANG,

Heard both sides.

2. Appellant filed this Appeal against the impugned order whereby demand of Service Tax is confirmed and penalties are imposed on the ground that Appellant had provided Rent-a-Cab Operator's Service which is a taxable service. The contention of Appellant is that Appellant entered into an agreement with B.S.N.L. and provided a cab to B.S.N.L.. As per the terms of agreement the payment is to be made on monthly basis. The Appellant relied upon the decision of the Tribunal in the case of R.S.Travels Vs. CCE, Meerut – 2008 (12) S.T.R. 27 (Tri.-Del.) to submit that the activity undertaken by the Appellant does not amount to providing any 'rent-a-cab' service.

3. Contention of Revenue is that Appellant entered into a contract with B.S.N.L. for providing a cab on rent on monthly basis and relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh vs. Kuldeep Singh Gill – 2010 (18) S.T.R. 708(P & H) whereby in a similar situation the Hon'ble High Court held that the assessee is providing rent-a-cab service.

4. We find that the Appellant is relying upon the decision of R.S.Travels Vs. CCE, Meerut – 2008 (12) S.T.R. 27 (Tri.-Del.). After going through the order we find that in that case issue was whether giving a cab on hire on demand basis for which the charges from the client are made on per K.M. basis are covered under the definition of 'rent-a-cab operator service'. Whereas in the present case Appellant had given a cab on hire to B.S.N.L. on rent basis based on a long term agreement - therefore the ratio of the decision in the case of R.S.Travels is not applicable to the facts of the present case.

5. On the contrary Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh vs. Kuldeep Singh Gill – 2010 (18) S.T.R. 708(P & H) held that in case a cab is given on hire to M/s.I.O.C. then the assessee is providing a taxable service. We find that the ratio of the decision of the Hon'ble Punjab & Haryana High Court is fully applicable to the facts of the

present case. Therefore we find no infirmity in the impugned order. We find demand of Service Tax is confirmed on the ground that Appellants are providing 'rent-a-cab' service.

6. In respect of penalty the contention is that as the penalty under Section 78 of the Finance Act has been imposed and therefore the penalty under Section 76 of Finance Act is not sustainable separately in view of the decision of Hon'ble Punjab & Haryana High Court in the case of City Motors reported in 2010 (19) S.T.R. 486. Further the contention is that under Section 78 of the Finance Act one option is to be given to the assessee that in case the amount of Service Tax along with interest and 25% penalty is paid within thirty days from the date of determination, the penalty is 25% of the demand. In the present case no such option is given to the assessee. The learned Counsel submitted ~~now~~ that they had paid amount of Service Tax along with interest and 25% of duty demanded as penalty ~~within 30 days of the penalty imposed~~ under Section 78 of the Finance Act. In view of this as no such option has been given to the Appellant in respect of deposit of duties and penalty of 25% and in view of the decision of Hon'ble Delhi High Court in the case of M/s.K.P.Pouches reported in 2008(228)ELT31, we consider the payment made by the Appellant is good discharge of the penalty under 78 of the Finance Act. The Appeal is disposed of as indicated above.

(Dictated & pronounced in the open Court.)

(MATHEW JOHN)
MEMBER(TECHNICAL)

(S.S. KANG)
VICE PRESIDENT

sm/-