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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/307 /2008 - CU[DB] Date **12/07/2011**

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

To :
M/S FASHION SQUARE

NEAR BHAGAT SINGH CIRCLE,ALWAR.

M/S FASHION SQUARE Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/271/ 2011 CU[DB]** dated 28.06.11

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.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029

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

COURT NO. II

Service Tax Appeal No. 307 of 2008

[Arising out of Order-in-Appeal No. 18/RKS(ST)/JPR-I/2008 dated 15.2.2008 passed by the Commissioner of Central Excise & Customs (Appeals), Jaipur-I, Jaipur].

Date of Hearing/decision: 1st June, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Sahab Singh, 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?	
2	Whether it should 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 Departmental authorities?	

M/s. Fashion Square — Appellant

Vs.

CCE, Jaipur — Respondent

Present for the Appellant : Shri S. Vasudevan & Shri Krishan Mohan, Advocates
Present for the Respondent : Shri Sumit Kumar, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Sahab Singh, Technical Member

FINAL ORDER NO. ST/271/11 **DATED** 28.6.11

Per D.N. Panda:

Learned Counsel submits that appellant is a consignment agent appointed by Kouton Retails India Ltd. for sale and marketing of "Charlie Outlaw" brand readymade garments. They were not marketing goods of Kouton booking orders for Kouton Retails India Ltd. for promoting sale of Kouton's goods. Had the appellant promoted business of Kouton with other service recipient that would have been a case of provider of branded service. But when the appellant only promoted sale of Kouton as a consignment agent it has not promoted marketing of brand service. For such purpose the appellant not being a brand name service provider shall get exemption as small tax payer. Learned Counsel also relied on 3 orders passed in appellant's own case on 1.10.10, 21.10.10, & 31.1.11 by Jaipur Commissionerate.

2. On the other hand, learned D.R. submits that the appellant having an outlet for promoting sale of branded goods of Koutons called "Charlie Outlaw" was providing brand named service since no marketing could be made without brand name. Learned D.R. also relied upon contractual terms between appellant and M/s. Kouton available at page 29 to 33 of appeal folder. Placing para 7(ii)(a) and (b) thereof he submits that using the letterhead and stationery of M/s. Kouton, the appellant has promoted their sale and provided brand name service.

3. Heard both sides and perused the record.

4. There is a thin dividing line in this case which has caused confusion to both sides. The appellant appears to be a trader of branded goods and while trading as consignment agent was done by Appellant no evidence is available on record to show promotion or marketing of branded goods of M/s. Kouton was done by Appellant for sale of goods to a recipient of such marketing service. In absence of any such evidence the appellant can only be held to have promoted marketing of goods of Kouton providing Business Auxiliary Service to Kouton Retail India Ltd. Had Revenue adduced evidence of procuring Business by the appellant entering into agreement with recipient of service of Appellant, Revenue would have succeeded. But service being only provided by the appellant to Kouton Retail India Ltd., there is no scope to appreciate that the appellant marketed any branded service. The appellant soldgoods in its outlet as a trader consignment agent. Such factual matrix does not result in inferring promoting or marketing of branded service. Such fact finding enables us to hold that appellant was a small tax payer and should not be denied exemption benefit under notification No. 6/2005-ST dated 1.3.2005. We order accordingly appeal is allowed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

RK