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(20)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/S/2896-2899/2011 IN ST/1386-1389/2011 - CU[DB] Date **13/02/2012**

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

To :
M/S VANDANA TRAVELS & TOURS,
(PROPRIETOR AJAY KISHORE SRIVASTVA)
VILL-HARHARAN, MAJRA SARAY TAKI CHAK,
CHATNAG ROAD, JHUNSI, ALLAHABAD (U.P.)
M/S VANDANA TRAVELS & TOURS, Appellant

Vs

C.C.E ALLAHABAD **STAY ORDER NO.ST/S/109-112/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/95-98/ 2012 CU|DB|** dated 30.01.2012 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.PRABHAT KUMAR
B-51(BASEMENT) SARVODAYA ENCLAVE,
NEAR MOTHER INTERNATIONAL SCHOOL
NEW DELHI 110 017.
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-3
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.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 25.1.2012

Stay Application No. 2896 to 2899 of 2011 in Service Tax Appeal No.1386 to 1389 of 2011

Arising out of the order in appeal No.46/CE/ALLD/2011; 47/CE/ALLD/2011; 48/CE/ALLD/2011; 49/CE/ALLD/2011 all dated 31.1.2011 passed by the Commissioner (Appeals), Central Excise , and Service Tax, Allahabad.

For Approval and Signature:

Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of 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?	Yes

Vandana Travels & Tours .. Appellants

Vs.

C.C.E. & S.Tax., Allahabad .... Respondent

Appearance:

Shri S. Dabas, Advocate for the Appellant/applicant
Shri B.L. Soni, A.R. for the respondent

Coram: Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. Mathew John, Technical Member

Final Oral Order No. ST/A/95 – 98/12-Cus.

Stay order No. ST/S/109 – 112/12-Cus.

Per Mr. S.S. Kang:

A common issue is involved in all these applications, therefore, they are taken up together for disposal.

2. The applicants filed these applications for waiver of pre-deposit of total service tax amount of Rs.5,69,819/-, interest and penalties. Four show cause notices were issued to the applicants for demand of service tax on the ground that the applicants provided rent-a-cab operator service during the period April 2002 to July 2008 to M/s IFFCO.

3. The adjudicating authority under four orders confirmed the demand with interest and imposed penalties. The appellants filed appeals before Commissioner (Appeals) and the Commissioner (Appeals) directed them to deposit a part amount of service tax for hearing of the appeals. The appellants failed to comply with the condition stay order. Hence the appeals were dismissed for non-compliance of the provisions of Section 35Fof the Central Excise Act, 1944.

4. The contention of the applicants is that show cause notice was not received by the applicants and the adjudication order was passed ex-parte. In case the applicants are held to be provider of taxable service, the applicants are entitled for small scale exemption Notification No.9/2004-ST dated 9.7.2004 during the period in dispute and the benefit of small scale exemption notification was not considered while confirming the demand. The applicants also pleaded financial hardship on the ground that the applicants are small operator and the direction to deposit the amount would cause undue hardship to them.

5. The contention of Revenue is that the applicants had not claimed the benefit of small scale exemption notification before the adjudicating authority. The applicants provided taxable service and this fact was not disclosed to the Revenue. It is only from the records of M/s IFFCO, the Revenue came to know that the applicants are receiving payments in respect of the taxable service provided to him. Therefore, it is not a fit case for total waiver of service tax amount.

6. We find that the adjudication order is passed ex parte and the appeals filed before Commissioner (Appeals) were dismissed for non-compliance of the provisions of Section 35F of the Act. Keeping in view the facts and circumstances of the case and in view of the fact that the benefit of small scale exemption notification was not considered at the time of confirming the demands, the applicants are directed to deposit total Rs 1 lakh (Rupees one lakh) within eight weeks for hearing of the appeals. Subject to such compliance, pre-deposit of the remaining amount of the dues is waived.

7. As we find that the applicants had not appeared before the adjudicating authority and the benefit of small scale exemption notification is not taken into consideration while confirming the demands, the matter is remanded to the adjudicating authority after setting aside the impugned orders to pass a fresh order after affording an opportunity of hearing to the appellants. The appeals are disposed of by way of remand.

8. The applicant shall pre-deposit Rupees one lakh and produce evidence before the adjudicating authority and thereafter, the adjudicating

authority shall proceed with de –novo adjudication.

9. Both stay petitions and appeals are disposed of.

(S.S. Kang)
Vice President

(Mathew John)
Technical Member

scd/