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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/872/2008-CU[DB]

Dated: **11/07/2012**

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

**ABHI RAM MISHRA**
S-343, SHIVALIK , BHEL, HARDWAR-
249403

**ABHI RAM MISHRA** (Appellant)

**VS**

**C.C.E. MEERUT I** (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/517/2012-CU[DB]** , dated **27/06/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

**Assistant Registrar**
**CUSTOMS Appeal Branch**

Copy To,
1. **Respondent**
**C.C.E. MEERUT I**
Excise Chowk, University Road, Mangal
Pandey Nagar, Meerut - 250005.

2. **Advocate(s) / Consultant(s):**
RENU GUPTA,ADVOCATE
1058, SECTOR-3, R.K.PURAM, N
DELHI-22

3. **C.D.R**
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, NEW DELHI**
**Court No.III**

**ST/Appeal No.872/2008**

(Arising out of order in appeal No. 161/CE/MRT.1/08 dated 28.8.2008 passed by the Commissioner of Customs & Central Excise(Appeals), Meerut)

Date of Hearing: 27.6.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, 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? | No |
| 2. | Whether it would 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 Department Authorities? | Yes |

M/s Abhi Ram Mishra — Appellant

Vs

CCE, Meerut-I — Respondent

Appeared for the Appellant: Ms. Renu Gupta, Advocate
Appeared for the Respondent: Shri B.L. Soni, SDR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
**Hon'ble Shri Mathew John, Member (Technical)**

Final ORDER No. ST/A/517/12-Cus

Per Archana Wadhwa:

Learned Counsel appearing for the appellant is not disputing the confirmation of service tax of Rs. 1,95,866/- against them under the category of 'rent a cab service'. She however, submits that the service tax is required to be re-calculated by treating the entire consideration as cum-duty.

2. No objection by the learned DR.

3. In view of the above, while upholding the tax liability against the appellant, we direct the lower authority to re-quantify the tax by treating the same as cum-duty.

4. As regards penalty, the learned Advocate submits that the benefit of deposit of the entire dues along with 25% penalty was not given to the assesse. In this case, the appellant has already deposited an amount of Rs.1,04,000/-. She submits that such option should have been extended by the lower authorities.

5. In as much as the matter is being remanded and the quantum of penalty equivalent to duty are to be imposed, we direct the lower authority to extend the said option on payment of entire dues along with 25% penalty within a period of 30 days to the appellants. The imposition of penalties under sections 76 and 77 would also be reconsidered by the authority in the light of the precedent decisions of the Tribunal. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)