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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

STAY Application No. : ST/Stay/3123/2012, ST/Stay/3124/2012, ST/Stay/3125/2012
Appeal No. : ST/2402/2012-CU[DB], ST/2403/2012-CU[DB], ST/2404/2012-CU[DB]

Dated: **20/09/2012**

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

DESERT INN LIMITED
AMBABARI BRIDGE, PANIPECH,
JHOTWARA, JAIPUR.

Desert Inn Limited (Appellant)

VS

C.C.E. & S.T.-Jaipur-i (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/581-583/12/2012-CU[DB]**, Stay/MISC Order No. **ST/SO/969-971/2012/2012** and dated **06/09/2012** 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. & S.T.-Jaipur-i
NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR,302005

2. Advocate(s) / Consultant(s):
SANJAY JHANWAR/KESHAV MALOO,
CHIR AMRIT LAW CHAMBERS, 6TH FLOOR, MILE UNIQUE DESTINATION, OPP TIMES OF INDIA,TONK ROAD, JAIPUR.

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

P.T.O.

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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

DESERT INN LIMITED
AMBABARI BRIDGE, PANIPECH,
JHOTWARA, JAIPUR.

DESERT INN LIMITED
AMBABARI BRIDGE, PANIPECH,
JHOTWARA, JAIPUR.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

ST/Stay/3123 to 3125/2012 in &
Service Tax Appeal Nos. 2402 to 2404/2012

[Both arising out of Order-in-Appeal No. 79-81(AKJ)ST/JPR-I/2012 dated 30.4.2012 passed by the Commissioner (Appeals) Central Excise & Customs, Jaipur-I]

Date of Hearing/decision: 6th September, 2012

M/s. Desert Inn Limited — Appellant

Vs.

CCE, Jaipur-I — Respondent

Present for the Assessee : Shri Rahul Lakhwani, C.A.
Present for the Respondent : Shri V.P. Batra, A.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. ST/A/581-583/12-Cus
Stay order No. ST/S/969-971/12-Cus

Per D.N. Panda:

It is submitted on behalf of the appellant that leviability of service tax in respect of "Car parking" service provided while providing 'Mandap Keeper" service was subject matter of dispute before the Tribunal. Such a dispute has been finally decided in respect of the same appellant in service tax appeal NO. 689/2007 vide Final Order No. ST/117/2011 dated 29.3.2011 holding that Car parking charges shall be liable to service tax under the category of Mandap Keeper service.

2. In view of the aforesaid decision, similar such dispute being involved in present 3 appeals before us which are registered as ST/2402 to 2404/2012, we have no different view, following judicial discipline and Rule of consistency. Accordingly, service tax demand on the above service is confirmed and appeal on this count is dismissed except cum tax benefit if any available.

3. It was explained to us that in appeal No. 2402/2012 tax and interest have been paid as well as penalty to the extent of 25% of tax demand has also been paid. It is prayer of the appellant that there should not be penalty under Section 77 & 76 of Finance Act, 1994. We do not find any reason to waive penalty under Section 77 to prevent non-compliance to law. So far as penalty under Section 76 is concerned since the appellant has also discharged the penalty under Section 78 to the extent indicated above there shall not be further penalty under Section 76 of Finance Act, 1994. Further, cum tax benefit, if any, may be considered. We notice that same is the position in appeal No. 2404/2012. This appeal is also partly allowed waiving penalty under section 76 of Finance Act, 1994.

4. So far as appeal No. 2403/2012 is concerned, in view of decision made above and also considering that the option to pay 25% of penalty amount having already been given by learned Adjudicating Authority, there is no further scope to extend the same benefit once the appellant failed to exercise

such option. Accordingly that appeal is partly allowed ~~except~~ by waiving penalty under section 76 of the Finance Act, 1994.

5. In all the three appeals another dispute arose by the appellant is whether it is entitled to cum-tax benefit. This being a common question it is left to the Adjudicating authority to examine relevant invoices to find out whether there was cum-tax invoices issued while receiving consideration against taxable service provided. If that is apparent, he should not hesitate to grant appropriate relief in accordance with law in all these three appeals. Only to this extent in all three appeals re-computation of liability examining quantum of tax benefit is desirable and quantum of penalty payable under section 78 is redeterminable.

6. It is needless to mention that appellant shall get fair opportunity of hearing before Adjudicating Authority to satisfy the cum-tax benefit plea made before us.

7. In the result, all the three stay applications are disposed and appeals are partly allowed to the extent indicated above.

(Dictated & pronounced in the Open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK