CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 06.02.2017

Service Tax Appeal No. 60766 of 2013
(Arising out of order in appeal No. 156(ST)/RPR/1/2013 dated 13.09.2013 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur).

M/s Kailash Travelling Agencies — Appellant

Vs.

CCE&ST, Raipur — Respondent

Appearance:

Sh. Kapil Vaish, CA for the appellant
Sh. Sanjay Jain, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50799 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order in appeal No. 156(ST)/RPR/1/2013 dated 13.09.2013 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur.

2. The brief facts of the case are that the appellant is a proprietorship concern who is providing the services of taxies mainly to South Eastern Coalfields Limited. A very small portion of services is rendered to other receivers. The payment was received mainly in addition to cost of diesel. The appellant was providing Driver to its taxies. The appellant was not paying any service tax. After issuing a show cause notice dated 13.04.2011

the services provided by the appellant was brought under the heading rent-a-cab scheme falling under Section 65(105)(o) of the Finance Act, 1994. Being aggrieved, the appellant filed the present appeal.

3. With this background, we heard Shri Kapil Vaish, ld. C.A. for the appellant who submits that the tax was not collected by the appellant as the services were not covered under the head rent-a-cab scheme. On the other hand, Shri Sanjay Jain, ld. AR for the Revenue submitted that the appellant has already collected the tax but the same was not deposited in the exchequer.

4. After hearing both sides and on perusal of record, it appears that the appellant has not submitted reply to the show cause notice, so the order was passed ex-parte. The Commissioner (Appeal) reiterated the findings of the order-in-original without considering the submissions of the ld. Counsel. When it is so, than we set-aside the impugned order and remand the matter to the original authority to decide the issue denovo but after providing an opportunity of hearing to the appellant. Additional evidence, if need be, may be admitted as per law.

5. In the result, the appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant