**(2010) 02 AHC CK 0084**

**In the Allahabad High Court**

Friends Tour and Travels — APPELLANT

Vs

CESTAT — RESPONDENT

**Date of Decision :** 22-02-2010

**Acts Referred:**

**Citation :** (2010) 18 STR 391 : (2010) 27 STT 83

**Hon'ble Judges :** Rajes Kumar, J;Pankaj Mithal, J

**Bench :** Division Bench

# Judgement

1. This is an appeal against the order of Tribunal dated 17th February, 2009 by which the Tribunal has allowed the application for waiver of pre-deposit of the Service tax in part and directed the appellant to deposit a sum of Rs. 6 lacs.

2. Appellant has been treated as tour operator and accordingly has been held liable to service tax under the Service Tax Act.

3. The contention of appellant is that the appellant is not a tour operator and therefore, not liable for service tax.

4. The contention of the appellant has not been accepted by the adjudicating authority and a sum of Rs. 28,64,516.86 has been demanded for the period April, 2002 to August, 2004. Against the said order, appellant filed an appeal before the Commissioner (Appeals) along with an application for waiver of pre-deposit of the service tax but the Commissioner (Appeals) allowed the application in part and directed the appellant to deposit a sum of Rs. 5 lacs. It appears that the appellant has not deposited the said amount and therefore, the appeal has been rejected. Being aggrieved by the order of the Commissioner (Appeals) rejecting appeal, the appellant filed an appeal before the tribunal. The tribunal has disposed of the appeal and directed the appellant to deposit a sum of Rs. 6 lacs and directed the Commissioner (Appeals) to decide the appeal on merits on deposit of Rs. 6 lacs. In pursuance thereof the appellant deposited a sum of Rs. 6 lacs and thereafter the Commissioner (Appeals) decided the appeal on merit. The Commissioner (Appeals) dismissed the appeal. Against the said

 

order, the appellant preferred Second Appeal before the Tribunal along with an application for waiver of pre-deposit of the amount. The Tribunal by the impugned order allowed the application in part and directed the appellant to deposit a sum of Rs. 6 lacs.

5. Heard Sri H.P. Dube, learned Counsel for the appellant and Sri S.P. Kesarwani, learned Senior Standing Counsel.

6. Learned Counsel for the appellant submitted that the appellant has a strong prima facie case on merit, inasmuch as the appellant is running in great financial crisis. He further submitted that a sum of Rs. 6 lacs has already been deposited and therefore, deposit of balance amount be waived. He submitted that the tribunal has erred in asking the appellant to deposit a further sum of Rs. 6 lacs, apart from Rs. 6 lacs which has already been deposited.

7. Learned Standing Counsel supported the order of the Tribunal.

8. Having heard counsel for the parties, we have gone through the impugned order of the Tribunal. The Tribunal in the impugned order has observed that the interpretation of the notification is doubtful and the appellant may or may not get the relief.

9. In view of the aforesaid observation and the claim of the appellant that it not liable for any service tax, we are of the view that the order of the Tribunal requires modification.

10. The appellant is directed to deposit a sum of Rs. 3 lacs within a period of one month from today. In case, if the appellant deposits the aforesaid amount the tribunal is directed to decide the appeal on merits, expeditiously.

11. With the aforesaid direction, the appeal stands disposed of.

 