

FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
CUSTOMS APPEAL BRANCH

Dated: 10/06/2016

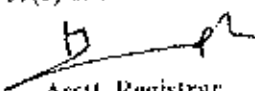
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70253/2016-CU[DB] dated 01/06/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/1429/2010	INSTRUMENTATION LTD C-19, H-PARK, MAHANAGAR EXTENSION LUCKNOW, U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-LUCKNOW 7-A, ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3 Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENSION,
LINK ROAD, NEW DELHI,

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisim Pitamah Marg, 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, Iseon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, I-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

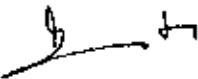
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

13 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad, -500082

14 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD

Ground, Near Karkardooma Court, Delhi-110032

15 C.D.R. 16 Office Copy 17 Guard File


Asstt. Registrar

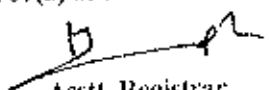
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Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

S.T. Appeal No.1429/10

Arising out of O/A No.130-St/LKO/2010 dated 13.07.2010 passed by
Commr. of Central Excise & S.Tax, Lucknow

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

M/s Instrumentation Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Lucknow

RESPONDENT (S)

APPEARANCE

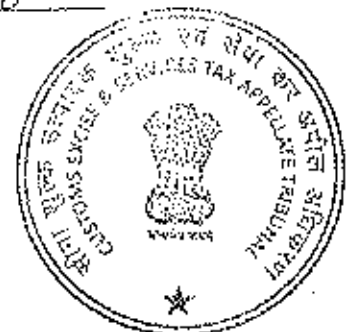
S/Shri B.L.Narasimhan & Hrishikesh, both Advocates for the Appellant
(s)
Shri Pawan Kumar Singh, Supdt. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 01.06.2016

Final ORDER NO. 70253/2016



Per Mr. Anil Choudhary :

The issue in this appeal is whether the appellant, being a service provider, is liable to service tax for carrying works of preparation of ~~for~~ ^{for} Elector's Photo Identity Card (EPIC) i.e. Matdan Pahchan Patra.

2. SCN was issued on the appellant as it appeared to Revenue that the appellant is providing photography service under Section 65 (78) of the Finance Act, 1994 w.e.f. 16.07.2001, when tax on photography service was introduced and the service was defined as :

" 'Photography' includes still photography, motion picture photography, laser photography, aerial photography and fluorescent photography and"

further, Section 65 (79) of the Act defines as under :

" 'photography studio or agency' means any professional photographer or any person engaged in the business of rendering service relating to photography".

The appellant had entered into an agreement dated 09.03.2003 with the Governor of State of Jharkhand for preparation of EPIC, which involves photography and the same ~~are~~ ^{are} appeared to be taxable ~~for~~ ^{for} service, for which, the appellant had received service charges from the State of Jharkhand during the period from 2003-04 to 2006-07. Similar services were also provided in the States of Uttarkhand & Madhya Pradesh. The appellant was already a registered dealer under the Service Tax provisions and was filing the returns regularly and had paid the admitted service tax in respect of maintenance and repair services, commissioning and installation services.



3. The appellant contested the SCN among other grounds stating that their activity of preparation of EPIC is not a taxable activity as the said activity is sovereign activity of the State or the Union and hence, is not taxable under the provisions of Section 65 (78) and (79) of the Finance Act, 1994. The appellant had also relied upon on the ruling of this Tribunal in the case of Commr. of Customs & Central Excise, Hyderabad II Vs. CMC Ltd. : 2007 (7) S.T.R. 702 (Tri.-Bang.), wherein under similar circumstances, it was held that the issue of EPIC cannot be considered as "Photo Identity" falling within the definition of "Photography" and "Photography studio or agency" as per Section 65 (78) and 65 (79) of the Finance Act, 1994 as the activity carried out by M/s CMC Ltd. is sovereign activity of the State functionaries, which cannot be brought under tax limit.

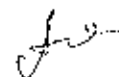
4. The Additional Commissioner refused to rely on the ruling of this Tribunal on the ground that as the Revenue have preferred appeal before the Hon'ble High Court, the issue has not attained finality and further, confirmed to proposed duty liability of Rs.23,73,000/- with interest and equal amount of penalty under Section 78 of the Finance Act, 1994. Further, penalty was imposed under Sections 76 & 77 of the Finance Act, 1994.

5. Being aggrieved, the appellant preferred appeal before the Ad.Commissioner (Appeals), who was pleased to dismiss the appeal agreeing with the findings of the Additional Commissioner.

6. Being aggrieved, the appellant-assessee is in appeal before this Tribunal.



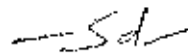
7. The Id.Counsel appearing for the appellant, urges that the impugned order is bad and cryptic and have ignored ruling of this Tribunal, which were binding by the Id.Commissioner (Appeals). He has further pointed out that the said Ruling in the case of M/s CMC Ltd. (supra), have been relied on by the another Division Bench of this Tribunal in the case of UTI Technology Services Ltd. Vs. Commr. of Service Tax, Mumbai : 2012 (26) STR 147 (Tri.-Mumbai), wherein considering the issue of PAN Cards on behalf of Income Tax Department, it was held that the PAN Cards are issued in relation to sovereign function of Income Tax Department, of levy and collection of Income tax. It is not in relation to any business, and hence, not leviable to service tax. He also points out that Division Bench also made reference to CBEC Circular No.89/7/2006-S.T. dated 18.12.2006, wherein Board have opined that a number of sovereign public authorities, perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. The tax collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such activity performed by an authority under the provisions of law, does not constitute provision of taxable service to a person and therefore, no service tax is leviable on such activities. ^{In} The similar facts and circumstances, the ^{fact}



Division Bench of this Tribunal in the case of Commr. of Central Excise, Indore Vs. Ankit Consultancy Ltd. : 2007 (6) STR 101 (Tri.-Del.), relying on the ruling of the Hon'ble Supreme Court in the case of Bhaktawar Singh Balkishan Vs. Union of India : 1988 (2) SCC 293, also held that preparation of voter list for Chief Electoral Officer, is a part of sovereign activity of State and not a business activity with an eye on profit and the same is not assessable to service tax. It is further urged that the works done EPIC, is in the nature of works contract. It is further urged that the impugned order is contrary to the Circular of CBEC and fit to be set aside. He further urges that the entire demand is time barred as extended period of limitation is not invokeable, therefore, there is no contumacious conduct or suppression of facts.

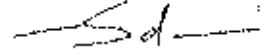
8. The Id.A.R. for Revenue, relies on the impugned order.

9. After considering the rival contentions, we hold that the work done by the appellant in respect of preparation of EPIC under agreement with the Governor or the State functionaries, was a sovereign activity of the State/Union and accordingly, the said activity is held not taxable. Similar views have been expressed by the CBEC in their Circular dated 18.12.2006 (supra). Thus, we set aside the impugned order and allow the appeal with consequential relief in accordance with law.



(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

mm



(A. CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रती / Certified True Copy

सहायक पंजीकृत / Asstt. Registrar
संविधान, उत्पाद शुल्क एवं सेवा कर
अपील अधिनियम / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, अहमदाबाद-211001
38, M. G. MARG, AHMEDABAD-211001

