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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NO.26,Sashtri Bhavan Annexe Building, Haddows Road,Chennai-600006

OFFICE OF THE COMMISSIONER (AUTHORISED REPRESENTATIVE) CESTAT
3 0 AUG 2017
SHASTRI BHAVAN ★ CHENNAI-6

Order Forwarding Letter

Final Order No. 41371 / 2017

CROSS Application No. : ST/CROSS/72/2009
Appeal No. : ST/390/2009-DB

Appellant :	Respondent :
Commissioner of Central Excise - Tirunelveli	**Gomathy Mills Ltd**

I am directed to send herewith a certified copy of the **Final Order No. 41371 / 2017** dated **31/07/2017** ,passed by the Tribunal under Section 129 B of the Customs Act 1962/Section 35C of the Central Excise Act 1944/Section 86 (7) of the Finance Act 1994.

Assistant Registrar
CESTAT - Chennai

Dated: 07/08/17

To:

Gomathy Mills Ltd
Veeravanallur
Tirunelveli - 627426
Tamilnadu

Copy forwarded to :

Commissioner of Central Excise - Tirunelveli

Commissioner of Central Excise – Madurai (Appeal)

The Commissioner (AR) , CESTAT Chennai.

Indirect Tax Bar Association CESTAT, Chennai

1) M/s. Centax Publications (P) Ltd.

2) M/s. Company Law Institute of India (P) Ltd.

3) M/s. Taxindiaonline.com (P) Ltd. Chennai.

4) M/s. Tax Man Allied Services Ltd New Delhi.

5) M/s. Easy Services Tax Online.Com (P) Ltd Ahmedabad.

6) M/s. Lawcrux Advisors (P) Ltd. Faridabad.

7) M/s. Mark Professional Services (P) Ltd.

8) M/s. The ICFAI Society, Hyderabad

9) M/s. Knowledge Processing Pvt Ltd., Delhi

10) M/s. Taxongo Pvt Ltd.

11) Guard File.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH

CHENNAI

ST/390/2009 & ST/CO/72/2009

(Arising out of Order-in-Appeal No.134/2009 dated 30.4.2009 passed by the Commissioner of Central Excise (Appeals), Madurai)

Commissioner of Central Excise, Tirunelveli — Appellant

Vs

Sri Gomathy Mills Pvt Ltd — Respondent

Appearance: Shri K.P.Muralidharan, AC (AR) For the Appellant
None: For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / Decision : **31.07.2017**

FINAL ORDER No. 41371/2017

Per Bench

The respondents are engaged in the manufacture of cotton yarn and are registered with the Central Excise Department. The cotton yarn manufactured by them are

Customs, Excise & Service Tax Appellate Tribunal cleared to DTA parties as well as for export. The respondents availed the services of overseas agents for the export of cotton yarn for which the commission was paid to such overseas agents. The department was of the view that the commission paid to overseas agents would fall under the category of Business Auxiliary Services and therefore issued a Show Cause Notice demanding service tax for the period from August 2003 to January 2006. After due process of law, the original authority confirmed the demand alongwith interest and also imposed penalties. Being aggrieved appeals were filed before the Commissioner (Appeals) and vide order impugned herein the Commissioner (Appeals) set aside the demand and allowed the appeal filed by the respondents. Revenue is thus before the Tribunal.

2. The Ld.AR Shri.K.P.Muralidharan reiterated the grounds of appeal.

3. On behalf of the respondents, none appeared. However, cross objections were filed. After hearing, the department and on perusal of records, the appeal was taken for disposal.

4. The issue whether the commission paid to foreign agents would fall under Business Auxiliary Services and service tax is leviable under reverse charge mechanism prior to the introduction of Section 66 (A) in the Finance Act, 1994 is settled by the judgement in the case of Indian National Ship Owners Association Vs. Union of India reported in 2009 (13) STR 235 (Bombay). This Tribunal vide F.O.No.42515/16 dt.22.12.2016 rendered in the case of M/s.Control Technique India Pvt Ltd Vs. CST, Chennai has followed the above judgement and set aside the demand. In view thereof, following the judgement rendered by the Hon'ble Bombay High Court as well as Tribunal as stated above, since the period involved is prior to 18.4.2006, we hold that the demand is un-sustainable. The Commissioner (Appeals) has rightly set aside the demand. The impugned order does not call for any interference. The appeal filed by the department is dismissed. The cross objections are disposed accordingly.

(Operative portion of the order was pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi
(Sulekha Beevi C.S.)
Member (Judicial)

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
24/8
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai