FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 07/07/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52089/2015-CU[DB]** dated **19/06/2015**

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/819/2009	**CHADDHA PAPER MILLS LTD** The General Manager, Bilaspur, Distt- Rampur.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To

3Advocate(s) / Consultant(s):

Kapil Vaish
B-51, 95,
Butler Plaza, Civil Lines,
Bareilly
Uttar Pradesh

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing: 19.06.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.ST/819/2009-CU[DB]

[Arising out of Order-in-Appeal No.189-ST/MRT-II/2009, dated 29.05.2009 passed by the C.C.E., Meerut-II]

M/s. Chaddha Paper Mills Ltd. — Appellants

Vs.

C.C.E., Meerut-II — Respondents

Appearance
Shri Kapil Vaish, Advocate - for the appellants

Ms. Suchitra Sharma, DR - for the respondents

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 52089/2015, dated 19.06.2015

Per Mr. R.K. Singh:

Appeal has been filed against Order-in-Appeal dated 29.05.2009, which upheld the Order-in-Original dated 19.11.2008 in terms of which service tax demand of Rs.36,55,731/- under Business Auxiliary Service was confirmed along with interest and penalty under Section 76 of the Finance Act, 1994 was also imposed.

2. The facts of the case are that the appellant had entered into a contract with M/s. Singh Traders, Rampur, UP. As per the contract, the appellant was to ensure that the movements of lorries/tankers of M/s. Ahuja Goods Carriers (P) Ltd. is smooth and speedy and it should also arrange/collect information of molasses in respect of quantity of molases lifted from various sugar mills and their stock status on regular basis and it provide this information to M/s. Jubilant Organosys Ltd. For the aforesaid services, the appellant received Rs.9/- per quintal of molasses lifted as supervision and organizing information charges. The appellant also entered into an agreement with M/s. Punjab Chemical Agency, New Delhi (supplier and dealer of chemicals) in terms of which the appellant was authorised to book orders on behalf of the agent for the product (caustic soda Lye) of M/s. Gujarat Alkalies & Chemicals Ltd. Vadodra and product (methanol) of M/s. Gujarat Narmada Valley Fertilizer Co. Ltd., Bharuch. As per the agreement, on the orders booked by the appellant, "*the agent shall supply material to the party and raise invoices directly on the party*". For procurement of such orders, the appellant received commission at the rate of Rs.400/- PMT on caustic soda lye and Rs.1,000/- PMT on methanol. The primary adjudicating authority held that the services rendered by the appellant fell under Business

Auxiliary Service [Section 65 (19) of the Finance Act, 1994] and therefore confirmed the impugned demand along with interest and penalty.

3. Appellant has contended that as far as the alleged service rendered to M/s. Punjab Chemical Agency, it was only acting as a commission agent and such commission was exempted under Notification No.13/2003-ST, dated 20.06.2003. As regards the contract with M/s. Singh Traders, its job was only supervision of loading and despatches of molasses and to ensure smooth and speedy movement of lorries/tankers and to collect information regarding the molasses in respect of quantity lifted from various sugar mills and their stock status on regular basis. This activity did not fall under any of the limbs of BAS as defined under Section 65 (19) *ibid* during the relevant period and therefore no service tax was leviable thereon.

4. Ld. Departmental Representative, on the other hand, reiterated the reasonings of the adjudication order She added that the contracts with Punjab Chemical Agency and M/s. Singh Traders for the relevant period were submitted only at the time of adjudication and therefore could have been fabricated as these were not produced during investigation.

5. We have considered the contentions of both sides and have also perused the agreement entered into by the appellant with M/s. Singh Traders and M/s. Punjab Chemical Agency. It is evident from the contract, which the appellant entered with M/s. Singh Traders that the

service rendered under that contract was essentially as quoted from the contract and reproduced below (the word "you" refer to the appellant):-

"2. *That you will ensure timely loading of quality of molasses from sugar mills from where purchases are finalized from time to time M/s. Jubilant Organosys Ltd., Gajraula.*

3. *That you will ensure that lorry tanker movement from sugar mill is smooth and speedy as well as they are not detained unnecessarily at the sugar mills.*

4. *That you will strictly adhere to the programme of loading/lifting given by the company time to time and will coordinate with the transporters authorised for deployment of lorry tankers for the lifting of molasses.*

5. *That you will ensure that no quantity of molasses purchase ordered is remained unlifted for any reason whatsoever unless you are given specific directives by us/Jubilant Organosys Ltd. in this respect. However, non-deployment of lorry tankers by the transporter will not be treated as a lapse/default on your part.*

6. *That you will arrange/collect information of molasses lifted from various sugar mill and their stock status on regular basis and communicate to the company/us.*

7. *That you will also collect information and details of purchase contract made by various sugar mill time to time.*

8. *That you will be paid @ Rs.9/- (Rupees nine only) per quintal of molasses quantity lifted towards supervision and organizing information. You shall submit your bill on monthly basis for the total quantity of molasses lifted during the month. The payment will be made on the basis of quantities of sugar mills as per excise gate passes in*

> *favour of Jubilant Organosys Ltd. duly verified by their commercial department."*

A perusal of the activities undertaken by the appellant as per the aforesaid contract thus clearly reveals that it was neither a promotion or marketing or sale of goods belonging to the client, i.e., M/s. Singh Traders nor it was promotion or marketing of the service provided by the client. Indeed, the activity was not captured under any of the limbs of the definition of BAS given under Section 65 (19) *ibid* during the relevant period. The appellate authority has clearly observed that the contract dated 02.04.2003 (from which the extract has been reproduced above) was only produced before the adjudicating authority and not at the time of investigation and therefore it appears to be fabricated and cannot be relied upon at this stage. If that be so and the said contract is not relied upon, then the Commissioner (Appeals) or the Original Adjudicating Authority did not have any documentation or evidence to ascertain as to what service was rendered by the appellant to M/s. Singh Traders and therefore the question of classification thereof would be preposterous. Thus, if the agreement is not considered, then there is no evidence of the nature of service rendered by the appellant and if it is considered the nature of service rendered by the appellant does not fall under BAS. So any which way, the impugned demand component pertaining to the activity done by the appellant for M/s. Singh Traders is not sustainable.

6. As regards the service rendered to M/s. Punjab Chemical Agency, we have perused the contract. Essentially the nature of service which the appellant provided is reproduced below from the contract:-

"2. *That you shall be authorised to book order on our behalf for the product, Caustic Soday Lye of Gujarat Alkalies & Chemicals Ltd., Vadodara and Methanol of Gujarat Narmada Valley Fertilizers Co. Ltd., Narmadanagar, Bharuch.*

3. *That the booked orders may be forwarded to us either over telephone or in person. On scrutinizing your order we shall supply your order we shall supply materials to the party and raise Invoice directly on party. We reserve the right of supplying materials against your order considering various aspects.*

4. *That you shall stand guarantee for the sales for which the orders have been routed through you.*

5. *You shall be entitled for commission @ Rs.400/- per MT on Caustic Soda Lye & @ Rs.1000/- per MT on Methanol against the deliveries made for which you will book orders & forward the same.*

6. *You may book the orders in the state of U.P., Punjab, Haryana and Rajasthan. However, the customer is free to place their orders directly to us. In that case, you shall not be entitled for commission on those sales."*

Here again, the appellate authority has observed that the contract for the year 2003-04 was submitted only on 27.08.2008. As reasoned earlier, in the absence of contract, there will be no basis for the primary adjudicating authority or the Commissioner (Appeals) to even ascertain as to what was the nature of service rendered in which case as reasoned in the preceding para (para – 5) the demand pertaining to the service rendered to M/s. Punjab Chemical Agency would not be sustainable. On the other hand, the said contract leaves no doubt that the appellant was essentially working as a commission agent and as per Notification No.13/2003-ST, dated 20.06.2003, BAS provided by a commission agent was exempted from the levy of service tax. As per the said Notification, "*commission agent means, the person who caused sale or purchase of goods on behalf of another person for a consideration which is based on the quantum of such sale or purchase*". Thus, the service rendered to M/s. Punjab Chemical Agency was clearly exempted under the said Notification.

6. In the light of the aforesaid analysis, we do not find the impugned demand sustainable and therefore the impugned order is quashed and the appeal allowed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK