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REGISTERED / AD

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

To

Dated: **26/05/2015**

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/51676/2015-CU[DB]** dated **01/05/2015**

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/477/2009	**MADHU ENTERPRISES,** 61-B, KASTURBA NAGAR, BHOPAL (M.P.)
		Name and Address of Respondent
2		-C.C.E Bhopal Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011

Copy To
3 Advocate(s) / Consultant(s):

C. Harishankar
46, BANK ENCLAVE,
DELHI
110092

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 01.05.2015

For Approval &Signature :

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/477/2009-CU[DB]

[Arising out of Order-in-Appeal No.162/BPL/2009, dated 25.03.2009 passed by the C.C.E., C.C.E.(Appeals), Jaipur-II]

M/s. Madhu Enterprises — Appellants

Vs.

C.C.E., Bhopal — Respondents

Appearance

None - for the appellants

Shri BB Sharma, DR - for the respondents

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

Final Order No. 51676/2015, **dated 01.05.2015**

Per Mr. R.K. Singh :

Appeal has been filed against Order-in-Appeal No.162/BPL/2009, dated 25.03.2009, which upheld the Order-in-Original dated 10.10.2008 in terms of which service demand of Rs.1,36,728/- was confirmed along with interest [and equal amount of penalty was also imposed (although Section 78 of the Finance Act, 1994 was not mentioned in the order portion)] on the ground that the amount received on account of godown rent, staff salary & sample handling and freight charges was not included in the assessable value. The appellant has contended that the godown was taken on rent by it for warehousing the goods and the rent paid for such warehousing was reimbursed by the service recipient. As regards staff salary & sample handling, it was contended that the staff was deployed on behalf of the service recipient for day-to-day work and the salary was first by the appellant but later claimed from the service recipient on actual basis. Regarding freight charges it was stated that the freight charges are not includible in the value for the purpose of clearing and forwarding service as the amount expenses incurred on account of loading and unloading, cargo handling and lorry freight were being reimbursed on the actual basis.

2. Ld. Departmental Representative on the other hand stated that warehousing and other reimbursables were in connection with providing C&F agent service and therefore were includible in the assessable value as the service tax is chargeable on the gross amount charged for the service rendered as per Section 67 of Finance Act, 1994. He cited CESTAT judgment in the case of ***Shri Bhagavathy Traders Vs. CCE,***

Cochin – 2011 (24) STR 290 (Tri.-LB) which held that concept of reimbursement arises only when service recipient was having obligation legal or contractual to pay any amount to any third party and the said amount was paid by service provider on behalf of service recipient. In the cross objections, the respondent cited several judgments to assert that warehousing charges and other reimbursables are not includible in the assessable value. It also stated that the other reimbursables were in relation to Misc. work they did for the service recipient like advisory work for filing sales tax returns, work relating to payments of bank drafts for tenders being filed by the service recipient procurements of space for its (i.e. recipient's) staff, procurement of drug license for it etc. which were not related to the C&F agent service rendered by them.

3. We have considered the contentions of both sides. We find that the issue of includibility of warehousing and other reimbursables in the value of C&F agent service has been a subject matter of several judicial pronouncements. In the case of ***K.D. Sales Corporation Vs. CCE, Belgaum*** – 2007 (6) STR 418 (Tri-Bang.), it was held that godown rent and clerk salary are not includible in the assessable value of C&F agent service. In the case of ***Nandini Warehousing Corporation Vs. CCE, Belgaum*** – 2007 (8) STR 511 (Tri.-Bang.), it was held that godown rent, establishment expenses, incentives, STD call charges, are excludible from the assessable value of C&F agent service. In the case of ***Sangamitra Services Agency Vs. CCE, Chennai*** – 2007 (8) STR 233 (Tri.-Chennai), it was held that reimbursement of actuals towards freight, labour, electricity, telephone etc. are not includible in the assessable value of C&F agent service. Appeal against this judgement

was filed before Madras High Court. Madras High Court dismissed Revenue's appeal ***CCE, Chennai Vs. Sangamitra Services Agency*** – 2014 (33) STR 137 (Mad.) and held that reimbursable expenses received by the assessee need not be added to the taxable value relating to clearing and forwarding agents service and that the receipt is for reimbursing expenditure incurred for the purpose and the mere act of reimbursement per se would not justify the contention of Revenue that the same was having the character of the remuneration or commission for the purpose of Rule 6(8) of Service Tax Rules, 1994. It is also seen that the Supreme Court has dismissed the Civil Appeal No. 171/2009 filed by C.C.E. against CESTAT Final Order No. A/1237-1239/2008-WZB/Ahd. dated 23.6.2008 as reported in 2008 (12) STR 345 (Tri.-Ahmd.) in the case of ***Reliance Industries Ltd. Vs. CCE*** which allowed assessee's appeal and held that *"expenses incurred on account of reimbursable expenses shall not be includible in the taxable value" (Service Tax Review 15 Sept. 2011 page 70).* The reimbursable expenses in this case related to travelling expenses of a "consulting engineer". In the wake of these judicial pronouncements, the CESTAT Larger Bench judgement in case of Shri ***Bhagavathy Traders*** (supra) which had distinguished CESTAT judgement in case of ***Sangamitra Services Agency*** (supra) has since been overtaken by Madras High Court judgement in the case of ***Sangamitra Service Agency*** (supra) and the judgement in case of ***Reliance Industries Ltd.*** (supra).

4. In the light of the analysis above, we do not find any merit in the contentions of Revenue and accordingly, we allow the appeal filed by the appellant.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK