

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

Dated: 21/07/2014

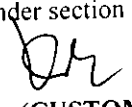
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/52861/2014-CU[DB] dated 10/07/2014

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/Stay/56543/2013 ST/56085/2013	Sankhla Udyog A-48a Mia,basni Phase-ii JODHPUR RAJASTHAN

Name and Address of
Respondent

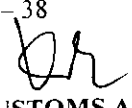
2		Commissioner of Central Excise and Service Tax- Jaipur-ii N C R BUILDING, STATUE CIRCLE...C- SCHEME, JAIPUR, RAJASTHAN 302005
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Copy To

3 Advocate(s) / Consultant(s):

Om. P. Agarwal & co.
56, Section - 7, N.P.H Road,
Jodhpur,
Rajasthan

- 4 Bar Association, CESTAT, Delhi
 5 Director Publications, Customs, Excise. I.P. Estate, Delhi
 6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm 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, Iscon Mall, Satellite Road, Ahmedabad-15
 10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, 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 C.D.R. 14 Office Copy 15 Guard File


 Asstt. Registrar(CUSTOMS Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,**
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing: 10.07.2014

Service Tax Application No. ST/Stay/56543/2013
Service Tax Appeal No.ST/56085/2013-Cu[DB]

[Arising out of Order-in-Appeal No. 215/RDN/ST/JPR-II/2012 dated 27.12.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-II]

For Approval & Signature :

Hon'ble Mr. 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s. Sankhla Udyog

...Appellant

Vs.

CCE & ST, Jaipur

... Respondent

Present for the Appellant : Shri O.P. Agarwal, Advocate
Present for the Respondent : Shri Ranjan Khanna, DR

FINAL ORDER NO. 52861/2014 DATED: 10.07.2014

PER: R.K. Singh

The appellant filed appeal against Order-in-appeal No. 215/RDN/ST/JPR-II/2012 dated 27.12.2012 which partially upheld the Order-in-Original No. 888/ST/2009-10 dated 24.09.2010 passed by



the Deputy Commissioner Central Excise Indore in as much as it upheld the demand of Service Tax of Rs. 61,847/- as against Rs. 69,360/- confirmed vide the said order-in-Original.

2. Briefly stated the facts of the case are that the appellant having service tax Registration No. AACFS8313CXM003 was engaged in providing "Repairs and Maintenance Services". It was alleged in the Show Cause Notice that there was a difference between amount shown in their ledger and in the ST-3 returns for the period from Oct., 2004 to March, 2009 on which it did not pay service tax of Rs. 258926/- and the same was liable to be recovered alongwith interest and penalty by invoking the extended period.

3. The appellant contended before the adjudicating authority that prior to 16.06.2005 repair service other than under a maintenance contract was not liable to service tax and the CESTAT New Delhi vide order No. 2007(5) STR-37 (Tri.-Del.) held that their Transformer Repairing Contract with RSEB was a repair contract and so the service rendered there-under was not taxable under Finance Act, 1994. Thereafter, the appellant contended, they became eligible for small scale exemption under Notification 6/2005-ST with effect from 16.06.2005. Further the difference between the figures shown in the ledger and in the ST-3 returns occurred because in the ledger the figures were shown on accrual basis whereas in ST-3 returns the figures were shown on actual realization basis and that there had been ~~no~~ suppression or wilful mis-statement on their part.

4. The Id. AR reiterated the contentions contended in the impugned Order-in-Appeal.



5. We have considered the facts and the submissions. In this regard, it is pertinent to quote a para from the Order-in-Original:

"At this stage it is not possible to check each and every entry running into thousand for four years. Moreover the noticee also did not give list of outstanding payments as on 1.4.2009 which infers that all repairing payments have been received by 1.4.2009. So in want of complete details, I am of the view that out of service tax liability of Rs. 5,51,324/- it paid Rs. 4,81,964/- only. So, I pass the following order after giving benefit of Notification No. 6/2005-ST dated 1.3.2005. Since interpretation of law is involved so I opt section 80 of Finance Act, 1994 and pass the order accordingly.

6. As may be observed, the adjudicating authority has clearly stated that there was interpretation of law involved and he extended the benefit of Section 80 of Finance Act, 1994 for not imposing any penalty. It clearly shows that the ingredients required for invoking extended period are not present in this case. Indeed in the entire adjudication order there is no word as to how the extended period is invocable. As such we find that the extended period is not invocable in this case.

7. It is also seen that the adjudicating authority categorically stated that it was not possible to check each and every entry running into thousands and then summarily went ahead and confirmed the impugned demand. It is to mention that once the appellant contended that the demand raised was untenable because the difference between the figures of their ledger and in their ST-3 return was for the reason mentioned earlier, a clear finding was required to be given by the adjudicating authority instead of brushing it aside on the ground that it was not possible to verify their claim.

8. In view of the forgoing we set aside the impugned order and remand the case to the original adjudicating authority to decide the same afresh after giving the appellants opportunity for being heard and taking ⁱⁿ to account their submissions but without invoking the extended period.

[Dictated & Pronounced in the open Court].



(Justice G. Raghuram)
President



(R.K. SINGH)
TECHNICAL MEMBER

Neha