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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

Dated: **08/06/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/51781/2015-CU[DB]** dated **25/05/2015**

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.**

09/6/15

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/53085/2014	**MAHAVEER TRANSPORT** 89,VIVEKANAND NAGAR RAIPUR,C.G
		Name and Address of Respondent
2		**C.C.E. & S.T.-RAIPUR** CENTRAL EXCISE BUILDING,DHAMTARI ROAD, TIKRAPARA,RAIPUR, CHHATTISGARH-492001

Copy To

3Advocate(s) / Consultant(s):

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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

9/6/15

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. II

Application No. ST/S/53460/2014
Appeal No. ST/53085/2014-ST(DB)

[Arising out of Order-in-Original No. 207(ST)/RPR-I/2013 dated 16.12.2013 by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Raipur].

For approval and signature:
Hon'ble Shri Ashok Jindal, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should 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 Departmental authorities?	

M/s. Mahaveer Transport ....**Appellants**

Vs.

C.C.E. Raipur ....**Respondent**

Appearance:

None present for the Appellant
Shri Amresh Jain, DR for the Respondent

CORAM:
Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri R.K. Singh, Member (Technical)

Date of Hearing: 25.05.2015

FINAL ORDER NO. 51781 /2015-ST(DB)

Per Ashok Jindal:

Appellant is in appeal against the impugned order wherein their appeal has been dismissed by the Ld. Commissioner (A) that the appellant has not followed rule 5 of the Central Excise Appeals Rules 2001. Therefore, appeal was dismissed.

2. On perusal of the impugned order we find that appeal itself can be disposed of at this stage. Therefore, after waiving the requirement of pre deposit, appeal is taken up for final disposal with the consent of the Ld. AR.

3. The appellant has challenged the adjudication order before the ld. Commissioner (A) on the following grounds:

3.1 That the Learned Assistant Commissioner has levied tax incorrectly considering clause (68) of Section 65.

The clause (68) of Section 65 of Finance Act 1994 read as follows :-

"manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person".

whereas the Assistant Commissioner has considered clause (68) of Section 65 as follows :-

"Goods Transport Agency to mean any person engaged in providing any service, directly or indirectly, in any manner for transport of goods by road, temporarily or otherwise, to a client".

3.2 That the Learned Assistant Commissioner has not considered Service Tax Rules, 1994 while levying tax on M/s Mahaveer Transport.

The Rule 2(1)(d) of Service Tax Rules, 1994 provides for "person liable for paying service tax" means

(v)"In relation to taxable services provided by a goods transport agency, where the consignor or consignee of goods is, -

Appeal Before Commissioner (Appeals), Excise, Customs & Service Tax, Raipur (C.G)) M/s Mahaveer Transport

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any company formed or registered under the Companies Act, 1956(1 of 1956);

(c) any corporation established by or under any law;

(d) any society registered under the Societies Registration Act 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;

(e) any co-operative society established by or under any law;

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under; or

(g) any body corporate established, or a partnership firm registered by or under any law,

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage;"

As the M/s Mahaveer Transport has provided services to M/s Anand Construction which is registered partnership firm covered in seven categories of person and also registered under Finance Act, 1994 read with Service Tax Rules, 1994, so as per reverse charge mechanism provided in the Finance Act, 1994 and Service Tax Rules, 1994 the person who pays freight is liable for paying tax.

3.3 That the order passed by Assistant Commissioner failed to justify the extended period of limitation.

Mere allegation that assessee has not disclose their own that they have not provided above mentioned services for invoking the extended period of five years on suppression of the facts with intent to evade payment of service tax is not sufficient.

The Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Company V Collector of C.Ex. Bombay 1995 (78) ELT 401 (SC) held that the word 'Suppression' as Appeal Before Commissioner (Appeals), Excise, Customs & Service Tax, Raipur (C.G) M/s Mahaveer Transport used in the company of words like 'fraud, collusion or willful default' has to be strictly construed and thus the suppression has to be deliberate. Mere 'omission will not come within the ambit of Sec 11A of the Central Excise Act.

Therefore extended period assumed by the learned Assistant Commissioner is not correct and against the natural justice, and order passed by the learned Assistant Commissioner is bad in law so it is requested to drop the order.

3.4 That the Assistant Commissioner has erred in levying penalty under section 76, 77 & 78 of Finance Act, 1994.

Penalty cannot be imposed when appellant has in bonafide belief that he is not liable to pay service tax as the service tax is payable by consignor or consignee of goods whoever makes the payment of freight. Therefore penalty may kindly be deleted.

4. Instead of deciding the said issue the Ld. Commissioner (A) held that appellant has not followed the procedure laid down under Rule 5 of Central Excise Appeal Rules 2001. Therefore, the appellant is not entitled to raise new grounds before him for deciding the appeal.

5. We have examined the grounds raised by the appellant in appeal filed before the Ld. Commissioner (A) are legal in nature and same can be raised at any point of time. Therefore, the ld. Commissioner (A) is required to answer the issue raised by the appellant on merits which Ld. Commissioner has failed to do so. In these circumstances, we do not find any merits with the impugned order. Same is set aside and matter is remanded back to the Ld.

Commissioner (A) to decide the issues raised by the appellant in their appeal on merits.

6. With these terms, appeal is allowed by way of remand. The stay application is also disposed off in the same terms.

(Dictated and pronounced in the open court)

04.06.15

(R.K. Singh)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

Bhanu