(16)

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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: **03/08/2015**

To

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

Final Order No. **ST/A/52360/2015-CU[DB]** dated **23/07/2015**

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/99/2009 | **C.C.E. INDORE**<br>Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.) |
| | | | Name and Address of Respondent |
| 2 | | | PHOTO FAST COLOUR LAB,<br>UG-15, TRADE CENTRE<br>KANCHAN BAGH, INDORE. |

**Copy To**

3 Advocate(s) / Consultant(s): **Shri.Abhishek Jaju, Advocate**

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 23.07.2015**

**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/99/2009-CU[DB]

[Arising out of Order-in-Appeal No.IND-I/188/2008, dated 12.11.2008 passed by the C.C.E.(Appeals), Indore-I]

C.C.E., Indore — Appellant

Vs.

M/s. Photo Fast Colour Lab — Respondent

**Appearance**
Shri MR Sharma, DR - for the appellant

Shri Abhishek Jaju, Advocate - for the respondent

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

**Final Order No.** 52360/2015, **dated 23.07.2015**

**Per Mr. R.K. Singh :**

Revenue has filed appeal against Order-in-Appeal dated 12.11.2008 which set aside the order in original dated 30/06/2008 in terms of which service tax demand of Rs.3,34,382/- along with interest and penalties was confirmed on the ground that in the value of the photographic service provided by the respondent the value of photographic paper and processing chemicals was not added.

2. The Revenue has contended that the cost to material is to be added to the value of the photographic services and cited the judgement of CESTAT in the case of ***Deluxe Colour lab [2006 (4) STR 152 (Tri. Del.)]***. The Revenue also stated that the decision of the apex court in the case of ***CK Jidheesh Vs. Union of India [2006 (1) STR 3 (SC)]*** which was relied upon by the Commissioner (Appeals) has been overturned by the Supreme Court in the case of ***BSNL and another versus Union of India [2006 (2) STR 161 (SC)]***. However, during hearing, the Ld. Departmental Representative fairly concedes that the issue has since been settled by Supreme Court in the case of ***State of Karnataka etc Vs. Pro Lab and Others etc. [2015 – TIOL – 08 – SC – CT – LB]***.

3. The ld. advocate for the respondent argued that value of goods is not includible in the value of service and that the service was rendered under a works contract.

4. We have considered both sides contentions. We find that in the case of ***State of Karnataka etc Vs. Pro Lab and Others etc.*** (supra) the Supreme Court after discussing the trajectory of the issue regarding the vivisectability of works contracts has held as under:-

> *"21. To sum up, it follows from the reading of the aforesaid judgement that after insertion of clause 29-A in Article 366, the Works Contract which was indivisible one by legal fiction, altered into a contract, is permitted to be bifurcated into two; one for "sale of goods" and other for "services", thereby making goods component of the contract exigible to sales tax. Further, while going into this exercise of divisibility, dominant intention behind such a contract, namely, whether it was for sale of goods or for services, is rendered otiose or immaterial. It follows, as a sequitur, that by virtue of clause 29-A of Article 366, the State Legislature is now empowered to segregate the goods part of the Works Contract and impose sales tax thereupon. It may be noted that Entry 54, List II of the Constitution of India empowers the State Legislature to enact a law taxing sale of goods. Sales tax, being a subject-matter into the State List, the State Legislature has the competency to legislate over the subject.*
>
> *22) Keeping in mind the aforesaid principle of law, the obvious conclusion would be that Entry 25 of Schedule VI to the Act which makes that part of processing and supplying of photographs, photo prints and photo negatives, which have "goods" component exigible to sales tax is constitutionally valid. Mr. Patil and Mr. Salman Khurshid, learned senior counsel who argued for these assessees/respondents, made vehement plea to the effect that the processing of photographs etc. was essentially a service, wherein the cost of paper, chemical or other material used in processing and developing photographs, photo prints etc. was negligible. This argument, however, is founded on dominant intention theory which has been repeatedly rejected by this Court as no more valid in view of 46th Amendment to the Constitution."*

In the light of the foregoing judgement of the Supreme Court coupled with judgement of the Supreme Court in the case of ***Imagic Creative Pvt. Ltd. vs. Commissioner of Commercial Taxes [2008 (9) STR 337 (SC)]***, wherein it has been held that payment of service tax and VAT are mutually exclusive, there remains no doubt that the value of photographic paper and consumables cannot be included in the value of photography service to levy service tax.

4. In the light of the foregoing analysis we find no merit in Revenue's appeal and the same is therefore dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK