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

Dated: **27/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53516/2015-CU[DB]** dated **14/08/2015**

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/574/2009	**AMIT ENTERPRISES** 44,zone-ii, MP Nagar, Bhopal.
		Name and Address of Respondent
2		-C.C.E Bhopal Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011

Copy To

3Advocate(s) / Consultant(s):

Sandeep Mukherjee & Associates,
CHARTERED ACCOUNTS,
B-62,
KASTURBA NAGAR,
BHOPAL,
MADHYA PRADESH
462024

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 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 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/Order : 14.8.2015

Appeal No. ST/574/2009-CU(DB)

(Arising out of Order-in-Appeal No.165/BPL/2009 dated 25.3.2009 passed by the Commissioner (Appeals), Central Excise & Customs, Bhopal)

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?	

Amit Enterprises — Appellant

Vs.

CCE, Bhopal — Respondent

Appearance:

Shri Sandeep Mukherjee, C.A. - for the Appellant

Shri B.B. Sharma, D.R. - for the Respondent

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

F. Order No. 53516/2015

Per **R.K. Singh :**

Appeal is filed against order-in-appeal dated 27.3.2009 in terms of which service tax demand of Rs.10,83,602/- was upheld (along with interest and penalties under Sections 77 & 78 of Finance Act, 1994), under clearing and forwarding agent service on the ground that the appellant had not included the labour charges for loading and unloading of cement transportation charges and godown rent.

2. The appellant has contended that the C&F charges @ 67 PMT comprised the following element:

Reimbursement on account of labour charges:	Rs.32/-
Reimbursement on account transportation:	Rs.25/-
Reimbursement on account of godown rent:	Rs. 5/-
Commission/Service charges:	Rs.5/-

It discharged service tax liability on commission/service charges as reimbursements were not includible in the assessable value as has been held by CESTAT in the cases of ***Keralam Enterprises Vs. CCE & ST, Cochin*** - 2008 (9) STR 503 (Tri.-Bang.), ***Sangamitra Services Agency Vs. CCE, Chennai*** – 2007 (8) STR 233 (Tri.-Chennai), ***S&K Enterprises Vs. CC & C. Ex. (Appeals), Calicut*** – 2008 (10) STR 171 (Tri.-Bang.), ***Narottam & Company Vs. CCE, Jaipur***- 2014 (33) STR 472 (Tri.-Del.), ***Nandini Warehousing Corporation Vs. CCE, Belgaum*** – 2007 (8) STR 511 (Tri.-Bang.), ***Ankushis Enterprises*** – 2013 (30) STR 612 (Tri.-Del.). It also stated that the extended period is not invokable in the present case as there was no wilful mis-statement/suppression of facts and during the audit conducted in July 2005 it was directed to deposit differential service tax of Rs. 31639/- which it deposited along with interest and that all the facts were known to Revenue.

3. The ld. DR reiterated the grounds adopted in the impugned order.

4. We have considered the contentions of both sides. We find that the issue of includibility of re-imbursed expenses in the assessable value of C&F agent service has been the subject matter of several judgements of CESTAT as cited above. In the case of ***Nandini Warehousing Corporation*** (supra) it was held that godown rent, establishment expenses, incentives, STD call charges are to be excluded from taxable value. In the case of ***S&K Enterprises*** (supra), it was held that reimbursements on account of loading/unloading, coolie/cartage and freight charges are not includible in clearing and forwarding agent service. A similar view has been taken in CESTAT judgement in the case of ***Sangamitra Services Agency*** (supra) which was taken before Madras High Court by Revenue and Madras High Court vide order reported at 2014 (33) STR 137 (Mad.) held that reimbursable expenses received by assessee need not be added to the taxable value related to C&F agents service. We find that primary adjudicating authority in its order has cited the judgement of ***Keralam Enterprises*** (supra) and also other judgement in the

case of ***Sangamitra Agencies*** (supra) which supported the appellant's claim but the primary adjudicating authority did not follow the ratio of the said judgements on the ground that those judgements had not been accepted by Revenue and had been appealed against. We find this approach of the primary adjudicating authority totally unacceptable and in gross violation of the judicial discipline. Even as regards the allegation of suppression of facts it is a fact that during audit in May 2005 a short levy of 31,639/- was pointed out by the audit party which the appellant deposited along with interest. Having regard to it and in view of the various judgements cited earlier which have ~~been~~ consistently held that reimbursable expenses are not includible in the assessable value of C&F agents service and the fact that the break-up of Rs.67/- per tonne did show the labour and transportation charges and godown rent as reimbursement, it cannot be said to be unreasonable on the part of the appellant to have a bonafide belief that no service tax was payable on such charges. Thus we are of the view that the allegation of suppression of facts is not sustainable. It is a separate matter that on closer scrutiny these charges ~~are not~~ may not be found to be reimbursement of expenses in real sense and break up ~~was~~ may only be to facilitate to arrive at the gross amount of Rs. 67/- PMT ~~and~~ paid by the service recipient.

5. In the light of the foregoing, the appeal is allowed by way of remand to the primary adjudicating authority for de novo adjudication with the following directions.

(i) The demand for the normal period of one year should be recomputed in the light of the aforesaid judgements cited above by excluding only such charges which the appellant is able to demonstrate with evidence to be in the nature of reimbursements and the penalty under Section 76 of the Finance Act, 1994 should be recomputed accordingly.

(ii) The appellant shall be given an opportunity of being heard.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM