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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: **29/04/2015**

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. **ST/A/51431/2015-CU[DB]** dated **26/03/2015**</u>

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/369/2009	C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
		Name and Address of Respondent
2		B.CHAMPAKLAL & COMPANY, 97, SIYAGANJ, MAIN ROAD, INDORE (M.P.),,

Copy To
3<u>Advocate(s) / Consultant(s)</u>:

Krishna Garg & Co.
409,411, Chetak Centre,
12/2, R.N.T. Marg,
Indore-452 001

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 26.03.2015

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/369/2009-CU[DB]
[Arising out of Order-in-Appeal No.IND-I/21/2009, dated 05.08.2009 passed by the C.C.E.(Appeals), Indore]

C.C.E., Indore — Appellants

Vs.

M/s. B. Champaklal & Co. — Respondents

Appearance
Shri BB Sharma, DR - for the appellants

Shri Krishan Garg, Advocate - for the respondents

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

Final Order No. 51431/2015, **dated 26.03.2015**

Per Mr. R.K. Singh :

Revenue has filed this Appeal against Order-in-Appeal No.IND-I/21/2009, dated 05.08.2009 which set aside the Order-in-Original dated 24.12.2008 in terms of which ~~a duty~~ Service Tax demand of Rs.2,27,679/- was confirmed for the period April, 2002 to March, 2006 (along with interest and penalties) under the category of "Clearing and Forwarding Agents" service on the ground that the respondents had short paid service tax by not including in the assessable value the amounts recovered towards transportation charges, handling (loading and unloading) charges and other re-imbursements. Revenue has contended that these charges are includible in the assessable value as these are for functions which are integral part of "Clearing and Forwarding Agents" service. Revenue has further contended that the issue whether charges such as loading and unloading charges, security charges, electricity charges, stationery and printing, telephone and fax charges, photocopy expenses, re-packing charges, travelling charges, internet charges, etc. are excludible on the ground that they ~~have~~ were collected as re-imbursements from the service recipient has been referred to the Larger Bench of CESTAT in the case of ***M/s. Amit Sales Vs. CCE, Jaipur [2009 (13) STR 165]*** and thus the said judgement has not yet attained finality.

2. Ld. counsel for the respondents argued that the transportation charges are recovered as part of a separate agreement and the re-imbursibles related to telephone charges, warfage, etc. which were also recovered on actual basis as per the agreement and therefore were not includible in the assessable value and that loading and unloading can also be not treated as part of "Clearing and Forwarding Agent" service

~~and~~ as that is covered under cargo handling service, which became taxable with effect from 16.08.2002 while the impugned demand has been raised in respect of such handling charges only upto 15.08.2002. Further the respondents stated that there was no wilful mis-statement or suppression of facts.

3. We have considered the contentions of both sides. It has been clearly noted by Commissioner (Appeals) in the impugned order that the transportation charges have been recovered as a part of separate agreement. In the case of ***EV Mathai & Co. Vs. CCE, Cochin [2006 (3) STR 116 (Tri. – Bang.)]*** CESTAT held that the transportation chages under a separate contract are not includible in the assessable value for the purpose of "Clearing and Forwarding Agent" service. It was also so held in the case of ***Bhagya Nagar Services Vs. CCE, Hyderabad [2006 (4) STR 22 (Tri. – Bang.)]***. As regards loading and unloading charges and other re-imbursements, Revenue itself has conceded that the issue of includibility of such charges was referred to the Larger Bench in the case of *Amit Sales (supra)*. In a situation, where there was a difference of opinion on this aspect between two ld. Members of CESTAT, the allegation of wilful mis-statement/ suppression of facts for evading service tax can hardly been sustained merely because, as alleged in the Show Cause Notice, the Respondents had not included the impugned amounts in the assessable value. In the present case, we find that the Show Cause Notice was issued on 21.09.2007, while the demand pertains to the period 2002-03 to 2004-05. Evidently, the demand relating to loading/ unloading charges and other reimbursables is clearly hit by time bar.

4. In the light of the foregoing, we do not find Revenue's appeal sustainable and the same is therefore dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK