

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

Appeal No. ST/482 /2007

Date 15/01/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SMART CHIP LIMITED
A-431, SHAHURA, BOPAL-462016, MP

M/S SMART CHIP LIMITED

Appellant

C.C.E BHOPAL

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. *st/01/08* Customs dated *08/11/08*
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax
along with stay order no. st/08/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

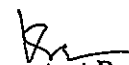
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Customs Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. 1**

**Service Tax Appeal No. 482 of 2007 with
Service Tax ^{stay} Application No. 2102 of 2007**

[Arising out of order-in-original No. CCE/05/COMMR/ST/2007 dated 01.06.2007 passed by the Commissioner, Customs & Central Excise, Bhopal].

Date of hearing/decision: 08.01.2008

For approval and signature:

**Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. T.K. Jayaraman, Member (Technical)**

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|--|---|--------|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | : | } Yes. |
| 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 Smart Chip Limited ...Appellant
[Rep. by Mr. V. Vasudevan, Ms. Tejesvi & Ms. Nupur, Advocates for the appellant]

Vs.

CCE, Bhopal ...Respondent
[Rep. by Mr. Mr. S. K. Verma, DR]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble T.K. Jayaraman, Member [Technical]

Per: T.K. Jayaraman:

*Final ORDER No-ST/01/08
Stay Order No No-ST/08/08*

This application for stay has been filed by the appellant in respect of the Order-in-Original No. 05/Comm/ST/2007 dated 01.06.2007 passed by the Commissioner of Central Excise, Bhopal. In terms of the impugned order, the appellant is required to pre-deposit the following amounts so that the appeal can be heard.

- (i) Service Tax Rs. 2,57,45,310/- + Education Cess Rs. 5,04,810/-
- (ii) Interest under Section 75
- (iii) Penalty equal to the Service tax demanded
- (iv) Further penalties under section 76 and 77 of the Finance Act.

2. Learned Advocate who appeared on behalf of the appellants stated that the appellants had entered into a contract with M/s Madhya Pradesh State Transport Department on a turnkey basis for automation of the entire Transport department so that driving licence and registration cards can be issued in the form of smart card. He referred to the agreement entered and specially the scope of the contract and pointed out that on going through the entire contract it would be clear that the service rendered by them definitely falls within the scope of Information Technology service which is excluded from the scope of business auxiliary service defined in the Finance Act, 1994. He said that Revenue has proceeded against the appellant on the ground that they ^{were} rendering the service of business auxiliary service and, therefore, liable to pay service tax on the gross amount collected from the Transport department. The entire sequence of events leading to the demand of service tax was narrated by the learned Advocate. Initially, letters were received from the Excise department for payment of service tax. The appellant approached the Hon'ble High court of Madhya Pradesh. The Hon'ble High Court in its order directed the appellant to get the remedy from the departmental authorities and also it was ordered that the competent authority would issue a speaking order within a period of one month. The main grievance of the appellant is that the whole adjudication process was completed in a ^{hurried} ~~hurry~~ manner even without giving an opportunity of personal hearing and also not considering the reply given by the appellants. On the other hand, learned DR explained the circumstances under which the adjudicating had to issue the order within the time prescribed by the Hon'ble High Court. We heard both sides for a considerable period. Learned Advocate made several contentions to show that the impugned service would not be covered under the business auxiliary service. Learned DR contended that in

terms of Board's clarification the said service would not be covered by Information Technology and, therefore, it would not be excluded from the scope of business auxiliary service. In any case, as the learned Advocate is of the view that the matter was not decided by considering the contentions raised in the reply to the show cause notice and also as the order has been passed without giving personal hearing, there is gross violation of the principle of natural justice. He, therefore, requests for remand of the matter to the original authority so that all the contentions raised can be examined in accordance with law. In view of this request, without commenting anything on the merits of the case, we are inclined to remand the matter to the adjudicating authority and we direct that the adjudicating authority shall grant a personal hearing to the appellant and pass a well reasoned order within a period of three months from the date of receipt of this order. Hence, the appeal itself is allowed by way of remand.

[Dictated and pronounced in the open Court].

[Justice S.N. Jha]
President

[T.K. Jayaraman]
Member [Technical]

[Pant]