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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

Appeal No. ST/621 /2007 Date 19/06/2008

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

To :
M/S.MAHESHWARI ELECTROS PVT LTD
PIPRALI ROAD, SIKAR(RAJ)

M/S MAHESHWARI ELECTROS PVT LTD Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/93/08 Customs dated 05.05.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE. "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010.Ghaziabad, DT. U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal No.621 /2007-CST(BR)

(Arising out of order in review No.26/ 07/ST dated 10.5.07 passed by the Commissioner of Central Excise, Jaipur-I)

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member(Technical)
Hon'ble Mr.P.K. Das, 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 Maheshwari Electros Pvt Ltd — Appellant
(Rep. by Shri Hemant Bajaj, Advocate)

Vs

CCE, Jaipur-I — Respondent
(Rep. by Shri B.K. Singh, DR)

Coram: **Hon'ble Mr M. Veeraiyan, Member(Technical)**
Hon'ble Mr. P.K. Das, Member(Judicial)

Date of Hearing: 5.5.08

Final Order No. ST/93/2008 – CST (Br.) ~~/2008-SM(BR)~~

Per P.K. Das:

Heard both sides and perused the record.

2. The relevant facts of the case, in brief, are that the Appellants were engaged in providing maintenance and repair of Electrical Distribution Transformers under rate contract with various Electricity Boards/Corporations. The Adjudicating Authority confirmed the demand of tax of Rs. 2,50,178/- and imposed penalty of Rs.80,000/-, Rs.1,000/- and Rs.2,50,178/- under Sections 76, 77 and 78 of the Finance Act, 1994 respectively. The Commissioner (Appeals) by Order in Appeal dated 10.2.2006 set aside the Adjudication order and allowed the appeal of the Appellants. Thereafter, the Commissioner of Central Excise revised the Adjudication Order under Section 84 of the Act. By Order dated 16.5.2007, the Commissioner of Central Excise revised the Adjudication Order whereby penalty of Rs.100/- per day was imposed under Section 76 of the Act.

3. The learned Advocate submits that the Revenue filed appeal before the Tribunal against the Order in Appeal dated 10.2.2006. He further submits that the Tribunal by Final Order No. ST/10-14/08 dated 16.1.08 dismissed the appeal filed by the Revenue. For the purpose of proper appreciation of the case, the relevant portion of the order of the Tribunal is reproduced below:-

"Revenue wants to charge service tax from the appellants under service maintenance or repair Prior to 16.6.05 scope of maintenance or repair relates, service provided by any person under maintenance contact or agreement. Present dispute is for the period prior to 16.6.05. We have gone through the copy of contract produce by the Revenue. Agreement is regarding rate contract for repair of damaged transformer. There is no

agreement for maintenance of transformer. Further, we find that the CBEC issued a Circular relied upon by the Commissioner provides that prior to 16.6.05 maintenance or repair carried out under the maintenance contract was covered under service tax. Repair or servicing carried out under contract other than maintenance was not covered under the purview of service tax. In view of the above circular and in view of the fact there was no maintenance contract we find no infirmity in the impugned order. Appeals are dismissed."

4. We find that the Commissioner (Appeals) set aside the demand of tax and penalty which has been upheld by this Tribunal by Final order dated 16.1.2008. Therefore, imposition of penalty under Section 76 of the Act by revised Order of the Commissioner is not sustainable. Accordingly, the order passed by the Commissioner of Central Excise is set aside. The appeal filed by the appellants is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(M. Veeraiyan)
Member(Technical)

(P.K. Das)
Member(Judicial)

MPS*