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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/52 /2006 Date 07/07/2008

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

To :
M/S RATHI ISPAT LTD
ISPAT NAGAR, GHAZIABAD

M/S RATHI ISPAT LTD Appellant
Vs
C.C.E GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of Final order No. St/105/08 Customs dated 5/6/08 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 GHAZIABAD
   CAMP OFFICE, ROOM NO. 232, CGO COMPLEX-I, KAMLA NEHRU NAGAR, GHAZIABAD 201002
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Service Tax Appeal No. 52 of 2006

[Arising out of the Order-in-Appeal No. 140/CE/APPL/GZB/2005 dated 09/12/2005 passed by The Commissioner (Appeals), Central Excise, Ghaziabad.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	
4.	Whether order is to be circulated to the Department Authorities?	:	

M/s Rathi Ispat Ltd. Appellant

Versus

CCE, Ghaziabad Respondent

Appearance

Shri Rajesh Chhibber, Advocate – for the appellant.

Shri Amit Jain, Authorized Representative (DR)– for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 05/06/2008.

Final Order No. ST/105/08 Dated : 5/6/08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby the demand of service tax has been confirmed in respect of consulting engineering service, real estate agent and clearing and forwarding (C&F) agent.

2. Contention of the appellant is that the demand in respect of clearing and forwarding service is confirmed after taking into consideration the decision of the Tribunal in the case of **Prabhat Zarda Factory (India) Ltd. vs. CCE** reported in **2002 (145) E.L.T. 222**. The contention is that the applicants are only providing the service in nature of a commission agent and the same is not covered under the scope of C&F Agent. The decision of the Tribunal in the case of Prabhat Zarda (Supra) is over ruled by the Larger Bench in the case of

Larson & Tubro Ltd. vs. CCE, Chennai reported in **2006 (3) STR 321**. The contention is that as per the terms and conditions of the agreement entered between the parties, the applicants are only working as commission agent and there is no evident on record to show that the activities of appellant covers under the definition of C&F agent.

3. In respect of the demand confirmed on the service provided as a real estate agent, the contention is that the service is provided prior to the period when the service of real estate agent was not under the scope of service tax, however, the consideration amount were received after the introduction of the service under the service tax. Therefore, the demand in respect of service provided as a real estate agent is not sustainable.

4. In respect of the service as consulting engineer, the contention is that applicant is not a professionally qualified engineers or engineering firm, therefore, are not covered under the scope of consulting engineer. It is also submitted that the demand is confirmed in respect of some fabrication

charges, in respect of supervision for maintenance of quality of goods and in respect of rehabilitation of pipeline which cannot be held to be a consulting engineer service. Hence, the demand is not sustainable.

5. Learned SDR submitted that merely on the ground that appellant is manufacturing firm, it cannot be held that they are not professionally qualified engineers or engineering firm. As the appellant provided the consulting engineering service by way of advise, consultancy and technical assistance, therefore, demand is rightly made. As per the terms of some of the agreements which were on the record shows that applicants provided the service of C&F agent and not the service of commission agent.

6. In respect of real estate agent, the contention of revenue is the plea is not taken before the lower authorities and as the applicants provided the service of real estate agent, therefore, liable for tax.

7. We find that demand in respect of C&F agent is confirmed after taking into consideration, the decision of the Tribunal in the case of Prabhat Zarda (Supra). The decision in the case of Prabhat Zarda is now set aside by the Larger Bench in the case of L&T (Supra). In view of this, matter requires re-consideration by the adjudicating authority after taking into consideration the terms and conditions of each agreement.

8. In respect of real estate agent, we find that the plea raised by the appellant that the service was provided prior to introduction of service under the Service Tax Act, the same was not before the lower authority, therefore, the same also requires re-consideration by the adjudicating authority. In respect of demand as consulting engineer, we find in some cases, the applicants received fabrication charges and charges in respect of rehabilitation of pipeline which cannot be held to be a consulting engineer. Therefore, this issue also requires reconsideration by the lower authority to decide afresh after taking into consideration the terms and conditions of the agreement. The impugned order is set aside and the matter is

remanded back to the adjudicating authority to decide afresh after affording an opportunity of hearing to the appellant. The appeal allowed by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK