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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/354 /2007, ST/CO/220/07, ST/M/562/2008 Date 29/08/2008

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

To :
M/S CHHATISGARH STATE BEVERAGES CO.
NEAR HOUSE OF SHRI TARUN CHATTERJEE,
GOVIND NAGAR, PANDRI, RAIPUR CHHATTISGARH

M/S CHHATISGARH STATE BEVERAGES CO. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/226/2008 **Customs** dated 25.08.08 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. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.ATUL JHA
   STATDING COUNSEL, GOVT. OF CHHATTISGARH, G-13, NIZZAMUDDIN WEST, NEW DELHI-110013
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 354 of 2007 with
ST/Cross Objection /220/2007 with ST/Misc 562/08

[Arising out of Order-in-Original No. Commr/RPR/21-24/ 2007 dated 23.3.07 passed by the Commissioner of Central Excise, Chhatisgarh.]

For approval and signature:

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

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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? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Chattisgarh State Beverages Corporation — Appellant

Vs.

Commissioner of Central Excise Raipur — Respondent

Appearance: Shri R.K. Hasija, Shri A.R.Madhav Rao, & Shri Atul Jha, Advocates for the Appellant
Mrs. A.P. Tiwari, Jt.CDR for the Respondent

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

Date of decision : 25.8.2008

Final **ORDER NO. ST/226/08**

Per M. Veeraiyan (for the Bench):

1.1 Appeal No. 354/07 is an appeal by M/s. Chattisgarh State Beverages Corporation against the order of Commissioner No. Commr/RPR/21-24/ 2007 dated 23.3.07.

1.2 Cross Objection 220/07 filed by the Department is connected to the above appeal.

2. Heard both sides.

3.1 The relevant facts, in brief, are as follows:-

a) The appellant is a corporation established by Chattisgarh State Government with a view to undertake wholesale business of Indian-made foreign liquor to ensure good quality at fair price, and to end certain undesirable practices.

b) There is agreement between the appellant and the various manufacturers- suppliers of liquor. The agreement inter-alia envisages that the manufacturers- suppliers to supply the liquor on FOR distribution basis to various depots maintained by the appellant; they are also required to make efforts for disposal of the liquor; if the liquor is not distributed within a specified time, in certain cases such liquor can be destroyed and no consideration shall be paid to the manufacturers- suppliers; the appellant has been licensed by the State Excise Commissioner for the purpose of procuring and selling the liquor.

c) The appellant is required to sell liquor only to dealers who are licensed by the State Excise Commissioner.

6. We have carefully considered the submissions from both the sides. At the outset, we notice that the Commissioner has held that appellant corporation is a procurement agent for the Government of Chhattisgarh. If this view is accepted, then the appellant would be rendering the services to the State Government and State Government would become the recipient of services. We have not been shown that the State Government is required to pay any charges to the appellant corporation for the so called services rendered. In view of the above, we hold that the appellant cannot be considered as an agent rendering services to the State Government for consideration, inspite of the fact that the agreement between the appellant corporation and the supplier of liquor refer the appellant as procurement agent.

6.2 As regards the relationship between the appellant corporation and the supplier of the liquor, we find, on perusal of the agreement, transfers are in the nature of sale and purchase. The licence granted to the appellant corporation is also for purchase and sale of liquor and the agreement clearly refer to prices FOR destination. Overlooking all these evidences, it will not be proper to conclude that there is no sale by appellant corporation and that they are acting as procurement agent. At any rate, they are not undertaking any agency function for the supplier of liquor manufacturer-supplier of liquor. Notwithstanding the fact that the appellant has chosen to describe their income from sale of liquor as commission in the balance sheet, we are of the considered view that the appellant corporation is engaged in purchase / sale of liquor and cannot be considered as C & F agent.

7. The order of the Commissioner is, therefore, not sustainable and the same is set aside and the appeal is allowed with consequential relief. The Cross objection and Misc. application are also accordingly, disposed of.

(Operative part of the order pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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