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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/334 /2006 - CU[DB] Date 07/10/2008

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

To :
THE COMMISSIONER CENTRAL EXCISE, JAIPUR I

NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

THE COMMISSIONER CENTRAL EXCISE, JAIPUR I Appellant

Vs

M/S LOUIS BERGER INTERNATIONAL INC Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/270/08 **CU[DB]** dated 25.09.08

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
   M/S LOUIS BERGER INTERNATIONAL INC
   AVS BUILDING, 2ND FLOOR, NEAR JAWAHAR CIRCLE, JLN MARG, MALVIYA NAGAR, JAIPUR
2. Adv. / Consult
   MR.PANKAJ MALIK
   CHARTERED ACCOUNTANTS 207-208, SHREE GOPAL TOWER, KRISHNA MARG, C-SCHEME, JAIPUR-302001
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 - 3
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
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-1
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. I

Service Tax Appeal No. 334 of 2006

[Arising out of Order-in-Appeal No. 39(MPM)ST/JPR-I/2006 dated 28.4.06 passed by Commissioner of Central Excise(Appeals I), Jaipur I]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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? : 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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Commissioner of Central Excise
Jaipur I — Appellant

Vs.

M/s. Louis Berger International Inc. — Respondent

Appearance: Mr. L.B.Yadav, DR for the Appellant
Mr. Atul Gupta, Company Secretary for the Respondent

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 25.9.2008

Final **ORDER NO. 87/2070/08**

Per M. Veeraiyan (for the Bench):

This is an appeal by the Department against the order of the Commissioner No. 39(MPM)ST/JPR-I/2006 dated 28.4.06.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:-

(a) The respondent rendered "management consultancy services" and received service charges from the Rajasthan Government agencies. While paying service charges to the respondent, income tax was deducted at source (TDS). In the normal course, if the TDS was not resorted to, the entire amount would have been paid to the respondent and treated as service charges and the service tax would have been paid.

(b) When the Department raised this issue , Rajasthan Govt. agencies came forward and paid the service tax on the portion of amount of service charges retained by them under TDS.

(c) Subsequently, on the basis of show cause notice issued, the original authority confirmed the demand of differential service tax along with interest on the TDS portion of the service charges and adjusted the amount paid by the Rajasthan Govt.

agencies towards the dues. He also imposed penalty under Section 76 and78 of the Finance Act, 1994.

(d) On appeal, the Commissioner (Appeals) set aside the penalty. He also held that the withheld amount of TDS should be treated as cum tax amount for the purpose of levy of service tax and accordingly, reduced the service tax demand from Rs.7,58,323/- to Rs.7,05,441/- and the interest from Rs.2,36,098/- to Rs.2,21,003/-.

(e) The Department is in appeal against the setting aside of the penalties and reducing the duty amount and interest.

4. Learned DR submits that on the entire amount of TDS withheld, service tax has been directly paid by the Rajasthan Government agencies. Since service tax has been separately paid by the recipients of service, on behalf of the appellant, the question of treating the amount of withheld TDS as cum duty tax for the purpose of service tax does not arise. Therefore, reduction of service tax demand and consequent reduction in interest on the service tax ordered by the Commissioner (Appeals) was incorrect. He also submits that setting aside the penalty was not justified.

5. Learned Company Secretary appearing for the respondent submits that the withheld amount of TDS was toward paying income tax on behalf of the appellant and the said amount was paid to the Income Tax Department by the Rajasthan Govt. agencies; the service tax payable on the entire with held amount has been paid by the Rajasthan Govt. agencies. There was no malafide intention on their part; it was a case of pure

interpretation of law as to whether service tax was payable on the withheld TDS amount or not. The benefit of section 80 of the Finance Act should be extended. Therefore, the order of the Commissioner (Appeals) in not sustaining the penalty should be upheld.

6. We have carefully considered the submissions. The liability to pay income tax arising out of income from the services rendered is on the appellant. The TDS amount deducted was payable only on behalf of the appellant to the Income Tax Department. We do not find any justification to exclude the said amount from the gross amount for the purpose determining the service tax and we allow the appeal of the department in this regard. We hold the service tax and interest shall be as determined by the original authority.

7. In respect of penalty, we accept the views expressed by the respondent that it was a case of pure interpretation of law as to whether service tax was payable on the withheld TDS amount or not. We do not find any reason to interfere with the findings and reasoning of the Commissioner (Appeals) in so far as the same relate to setting aside the penalty.

8. The appeal is disposed of on the above terms.

(Dictated & pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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