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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/328 /2006 - CU[DB] Date 20/10/2008

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

To :
M/S JITENDRA NATH & SONS
B-12, NEW SHOPPING ARCADE, SADAR BAXAR,
AGRA, UP

M/S JITENDRA NATH & SONS — Appellant

Vs

C.C.E. KANPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/276/2008 **CU[DB]** dated 10.07.08 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.ANIL SINGH SISODIA
   B-35,PRATAP NAGAR,AGRA 282010
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-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI
COURT – II

SERVICE TAX APPEAL NO. 328 OF 2006

[Arising out of Order-in-appeal No. 139-CE/APPL/KNP/2006 dated 27.4.2006 passed by the Commissioner (Appeals), Central Excise, Kanpur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. 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?	
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. Jitendra Nath & Sons — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:

Shri A.K. Sisodia, Advocate for the appellants;
Shri Amit Jain, Departmental Representative, for the Revenue;

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 10th July, 2008

FINAL ORDER NO. ST/276/08 **dated** 10/7/08

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby demand of service tax was confirmed on the ground that the appellants are providing service of Clearing & Forwarding Agent.

3. Contention of the appellants is that in the impugned order reliance is placed on the decision of the Tribunal in the case of Prabhat Zard Factory vs. CCE, reported in 2002 (145) ELT 222. Contention is that now the Larger Bench of the Tribunal in the case of Larsen & Toubro vs. CCE, reported in 2006 (3) STR 321 over-ruled the decision of Prabhat Zard Factory (supra).

4. Contention of the appellants is that they are only selling agent and are working on commission basis and, they are not providing any service of clearing and forwarding agent.

5. Revenue submitted that as per agreement between the principals and the appellants, the appellants are liable for collecting payment for the goods supplied and they shall secure such payment. In view of this clause in the agreement, the appellants are providing service of procuring orders, arranging payment for their principals, and therefore, are covered under the scope of clearing and forwarding agent.

6. We find that the Commissioner (Appeals) in the impugned order relied upon the decision of the Tribunal in the case of Prabhat Zard Factory (supra) which is set aside by the Larger Bench of the Tribunal in the case of L & T (supra). In these circumstances the impugned order is set aside and the matter is remanded back to the adjudicating authority to decide afresh after taking into consideration the terms and conditions of the agreement and the decision of the Larger Bench of the Tribunal. Appeal is disposed off by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 10th October, 2008

RK