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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/574 /2006 - CU[DB] Date 23/10/2008

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

To :
SHRIRAM HOLOGRAPHICS
B - 1, SECTOR 6, NOIDA.

SHRIRAM HOLOGRAPHICS Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/289/08 CU[DB] dated 23/10/08 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. NOIDA
   B - 123, SECTOR 5, NOIDA.
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 - 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 – 110 066.
Principal Bench, New Delhi

COURT NO. II
Service Tax Appeal No. 574 of 2006

[Arising out of the Order-in-Appeal No. 134/CE/APPL/ NOIDA/2006 dated 29/09/2006 passed by The Commissioner (Appeals), Central Excise, Noida.]

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?	:
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 Shriram Holographics — Appellant

Versus

CCE, Noida — Respondent

Appearance

Shri Rajesh Chhiber, Advocate – for the appellant.

Shri L.B. Yadav, 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 : 13/10/2008.
DATE OF DECISION: .

Final Order No. 57/289/08 Dated : 23/10/08

Per. Rakesh Kumar :-

The appellant are manufacture of self adhesive pressure sensitive holograms and heat sensitive hot stamping holograms, which they manufacture in their factory at Noida. During the period from 30/06/2001 to 16/08/2003, they provided technical consultancy to some of their clients for which total amount charged by them was Rs. 36,50,000/-. The Revenue treating them as "consulting engineers" seeks recovery of service tax amounting to Rs. 2,05,500/- on this amount alongwith interest on it at the applicable rate, besides imposition of penalty under Section 78 of the Finance Act, 1994. The appellant's plea is that during the period of dispute, they were not covered by the definition of "consulting engineers", as given under Section 65 (31) of the Finance Act. The Assistant Commissioner vide Order-in-Original dated 28/01/06 confirmed the service tax demand alongwith interest on it at the applicable rate and beside this, imposed penalty on them under Section 76, 77 and 78. On appeal, CC (Appeals) vide the impugned order dated 29/09/06 upheld the Assistant Commissioner's order.

2. Heard both the sides.

3. Shri Rajesh Chhiber, Advocate, the learned counsel on behalf of the appellant pleaded that the appellant being a manufacturer were not covered by the definition of "consulting engineer" during the period of dispute, that during the period of dispute, as per the definition of consulting engineers, as given in Section 65 (31), "consulting engineers" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in a one or more disciplines of engineering, that the appellant being a manufacturer, are not a engineering firm and, therefore, they are not covered by the definition of "consulting engineers", that they become covered by the definition of consulting engineers when the definition of

"consulting engineers" was amended by the Finance Act, 2006, as the amended definition of consulting engineer includes in addition to a professionally qualified engineer, any body corporate or any other firm engaged directly or indirectly in rendering any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering and that this Tribunal in the case of **Shakumbari Sugar & Allied Ind. Ltd. vs. CCE, Meerut-I** reported in **2006 (4) S.T.R. 567 (Tri. – Del.)** and **Shree Sidhball Steels Ltd. vs. CCE, Meerut** reported in **2007 (8) S.T.R. 191 (Tri. – Del.)** has held that a company engaged in manufacturing activity would not be covered by the definition of 'consulting engineers'.

4. Shri L.B. Yadav, the learned Departmental Representative, reiterating the Commissioner (Appeals)'s findings in the impugned order pleaded that the appellant during the period of dispute were covered by the definition of consulting engineers and in this regard he relied upon Hon'ble Calcutta High Court order in the case of **M.N. Dastur &**

Company Ltd. vs. Union of India reported in **2002 (140) E.L.T. 341 (Cal.)**.

5. We have carefully considered the submissions made from both the sides. The point of dispute in this case is as to whether during the period from 30/06/01 to 16/08/03, the appellant, —— a company engaged in manufacturing activity and who occasionally provided technical consultancy to some persons, are covered by definition of "consulting engineers" during that period. We find that the issue involved in this case is squarely covered by this Tribunal's decision in the case of Shakumbari Sugar & Allied Ind. Ltd. vs. CCE, Meerut-I (Supra), wherein the Tribunal held that mere employment of engineers would not make an organization an engineering organization, that engineering firms are a separate category altogether from general industrial organizations and they derive their separate and particular identity from the specialized engineering knowledge flowing from the employment of engineers and normal work undertaken by them and that when the assessee's identity is a sugar manufacturer and not as engineering firm

and the revenue also flows mostly from sugar manufacturing and selling and not from engineering service, providing technical consultancy in a stray cases would not make the assessee an engineering firm. This judgment of the Tribunal has been followed in the case of Shree Sidhball Steel Ltd. vs. CCE, Meerut (Supra). The judgment of Hon'ble Calcutta High Court in case of M.N. Dastur & Co. Ltd. vs. UOI (Supra) is not applicable to the facts of this case as in that case the issue involved was whether the expression – "Engineering firm" used in the definition of "consulting engineers" includes a company. In view of this, we hold that the appellant were not covered by the definition of "consulting engineer" during the period of dispute and hence they were not liable to pay any service tax. The impugned order, therefore, is not sustainable and the same is set aside. The appeal is allowed.

(Pronounced in open court on 23/10/08)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK