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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/336 /2006 - CU[DB] Date 07/11/2008
ST/M/1197/07 & ST/M/361/08

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR I — Appellant

Vs

M/S METAL ENGINEERING AND FORGINING CO — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/328/08 CU[DB] dated 14.10.08 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
   M/S METAL ENGINEERING AND FORGINING CO
   KHASARA NO 683/2 AND 700, GRAM, BENAD, TEHSIL AMER, JAIPUR (RAJASTHAN)
2. Adv. / Consult : Sh,. Alok Kothari, Adv
   A-92 Manish Marg, Nami Nagar, Gandhi Path
   Vaishali Nagar, Jaipur
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-110066.
Principal Bench, New Delhi.

ST/336/06 & ST/M/1197/07 & 361/08

[Arising out of Order-in-Appeal No.34(MPM)/ST/JPR-1/06 dt.25.4.06 passed by the Commissioner(Appeals), Jaipur)

For approval and signature:
Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, 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?

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: :

CCE, Jaipur — Appellant

Versus

M/s. Metal Engineering & Forging Co. — Respondent

Appearance
Shri L.B.Yadav, Authorised Departmental Representative(DR) For appellant
Shri Ashok Kothari, Consultant For respondent

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final Date of decision: 14.10.08
Order No. ST/328/08

Per S.S.Kang:

Heard both sides. The revenue filed Misc. application for raising additional grounds challenging the findings of Commissioner(Appeals) whereby it is held that demand is time barred. Misc. application is allowed.

2. The revenue filed this appeal against the impugned order whereby Commissioner(Appeals) held that the consideration for unloading of iron & steel materials received from RINL plant at railway siding, Loading into truck/tailor, transportation of the same from railway siding to stock yard by road, unloading of materials at yard is not to be added to the gross amount for the purpose of service tax as consignment agent.

3. The contention of the revenue is that there is a composite contract whereby the respondent is appointed as a consignment agent and as per the agreement, the handling and storage iron and steel materials of the company is the part of the contract. Therefore, the gross amount received as a consignment agent under the composite contract is liable for service tax and Commissioner(Appeals) has wrongly held that these handling charges are not to be included in the assessable value of the service tax for the purpose of levy of service tax. The revenue also

submitted that the ~~time~~ demand is not time barred as earlier SCN was issued for the period April'99 to Sept'2000. The respondent had not filed any return nor they have paid the service tax and also for demanding interest on old payment of service tax. In this situation, it cannot be held that allegation of suppression cannot be alleged of the respondent. The contention is that the respondent had not paid the service tax on the gross amount received as per the agreement, therefore, the present impugned order is not sustainable.

4. The contention of the respondent is that the handling charges and transport charges are not to be included in the assessable value for the purpose of imposition of service tax. The respondent relied upon the decision of the Tribunal in the case of E.V.Mathai & Co. vs CCE, Cochin reported in 2003(157)ELT.101 and the same has been followed by various decisions of the Tribunal such as Keralam Enterprises vs CCE & ST, Cochin reported in 2008(9)STR.503.

5. We find that in the present case a composite contract was entered by the respondent for providing service of consignment agent as per the terms and conditions of the contract. We have gone through the decision relied upon by the respondent in the case of E.V.Mathai & Co.(supra). We find that there are separate contract entered for services rendered as C&F agent and in respect of

transportation charges. In this situation, the Tribunal held that transportation charges are not to be added for the purpose of service tax leviable for providing the service of C&F agent. This view is following in the case of Keralam Enterprises(supra). The facts of the present case are different. In the present case, there is one contract for providing the service of consignment agent and the respondent is liable to pay service tax on the gross amount received as consignment agent as per the contract. The finding of the Commissioner(Appeals) is that the demand is time barred. We find that earlier show cause notice was issued as the respondent had not filed any return and they also paid service tax late. The respondent never disclosed to the revenue that they are not paying service tax in respect of the handling charges. In these circumstances, we find that impugned order is not sustainable and set aside. The appeal filed by the revenue is allowed.

6. In respect of imposition of penalty, we find that the respondent filed necessary declaration under Amnesty scheme on 2004. As per Amnesty scheme, the assessee who has not registered or not paid the service tax, are not liable for penal action. We find that the respondent filed declaration under Amnesty scheme, thereafter the proper officer vide letter dt.25.11.04 directed the

respondent to deposit the requisite amount which was subject matter of the present proceedings. As the declaration has been accepted by the revenue, therefore, as per the provisions of Amnesty scheme, it is not a case for imposition of penalty. Hence the respondents are not liable to pay any penalty. The appeal is allowed as indicated above.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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