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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/366 /2006 - CU[DB] Date 07/11/2008
ST/M/639/08

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

To :
M/S RAGHUVEER METAL INDUSTRIES LTD
VILLAGE-BIDIKCHYAWAS,NEAR
MANGLIYAWAS,DISTT AJMER

M/S RAGHUVEER METAL INDUSTRIES LTD — Appellant

Vs

C.C.E. JAIPUR II — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/331/08 **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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.J.K.MITTAL &CO
   A-15,THIRD FLOOR FLAT NO 3A,PRIYADARSHINIVIHAR DELHI

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/366/06 & ST/M/639/08

[Arising out of Order-in-Original No.356(HKS)CE/JPR-II/06 dt.13.6.06 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: :

M/s. Raghuveer Metal Inds. Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance
Shri J.K.Mittal, Adv. For appellant
Ms. A.P.Tiwari, Authorised Departmental Representative(JCDR) For respondent

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

Final

Date of decision: 23.10.08
Order No. ST/331/08

Per S.S.Kang:

The revenue filed Misc. application No.ST/M/639/08 for early hearing of the appeal. As the appeal already listed for regular hearing, the misc. application is dismissed as infructuous.

2. Heard both sides. The appellant filed this appeal against the impugned order whereby demand of service tax was confirmed on the ground that the appellants are providing the service of Clearing & Forwarding Agent. We find that the Commissioner(Appeals) in the impugned order relied upon the decision of the Tribunal in the case of Prabhat Zarda Factory (India) Ltd. vs CCE, Patna reported in 2002(145)ELT.222. The contention of the appellant is that they are not providing any service of C&F agent. They are Commission Agent only and also submitted that the decision of the Tribunal in the case of Prabhat Zarda Factory(India) Ltd.(supra) is already over-ruled by the Larger Bench of the Tribunal in the case of L&T Ltd. vs CCE reported in 2006(3)STR.321. The appellant also raised the issue of time bar.

3. We find that in the impugned order, the Commissioner(Appeals) relied upon the decision of the Tribunal in the case of Prabhat Zarda Factory(India) Ltd.(supra) which has already been over-ruled by the Larger Bench of the Tribunal in the case of L&T Ltd.(supra). The revenue pointed out that there is another decision of the Larger Bench of the Tribunal in the case of Medpro Pharma Pvt. Ltd. vs CCE, Chennai reported in 2006(3)STR.355 wherein the Tribunal held that in case the

person engaged in either clearing or forwarding operations, both are covered under the scope of clearing and forwarding agent.

4. In these circumstances, we find that it is a fit case for reconsideration by the adjudicating authority. The impugned order is set aside and the matter is remanded to the adjudicating authority for denovo adjudication after taking into consideration the above decisions of the Tribunal and after affording an opportunity of hearing to the appellant. The appeal is disposed of by way of remand.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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