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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/316 /2007 - CU[DB] Date 26/11/2008

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

To :
JITENDRA NATH & SONS

B-12, NEW SHOPPING ARCADE, SADAR BAZAR,
AGRA.

JITENDRA NATH & SONS Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/349/08 **CU[DB]** dated 19.11.08

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 316 of 2007

[Arising out of Order-in-Appeal No. 89-C E/APPL/KNP/ 2007 dated 8.3.07 passed by the Commissioner (Appeals) Central Excise, Kanpur.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Jitendra Nath & Sons — Appellants

Vs.

Commissioner of Central Excise
Kanpur — Respondent

Appearance:

Mr. Anil Singh Sisodia, Advocate for the Appellant
Mr. A.K. Madan, SDR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing/decision : 19.11.2008

Final **ORDER NO. 57/349/08**

Per P.K.Das (for the Bench):

The issue involved in this case is whether services provided by the appellant is falling under the category of "clearing and forwarding agency" during the period 2003-2004.

2. Learned advocate submits that the appellant is a selling agent of M/s. Raymond Ltd. In this connection, he drew the attention of the Bench to selling agency agreement between the appellant and M/s. Raymond Ltd. He submits that the appellant procured the orders from the dealers and getting the commission thereon. He also submits that during investigation they have clarified the nature of services undertaken by them vide their letter dated 14.2.04 addressed to the Deputy Commissioner of Central Excise. He also submits that the adjudicating authority passed the order relying upon the decision of the Tribunal in the case of Prabhat Zarda Factory (India) Ltd. vs. CCE, Patna [2002 (145) ELT 222 (Tri)], which has been over ruled by the Larger Bench of the Tribunal in the case of Larsen and Toubro Ltd. vs. CCE, Chennai [2006 (3) STR 321 (Tri-LB). The relevant portion of the said decision is reproduced below:

> **9.3** An agent engaged only for procuring purchase orders for the vendor on commission basis does not engage in any of the above activities, directly or indirectly. Commission agent engaged to procure orders and not entrusted with the work of clearing and forwarding of the goods would be a person who, in the ordinary course of business, makes contracts for sale or purchase of goods for others. The definition of "commission agent" in Section 2(aaa) of the Central Excise Act, 1944, would apply in relation to service tax as it applies in relation to duty of excise by virtue of sub-section (121) or Section 65 of the Act.

Services of commission agent are included in the definition of "business auxiliary service" under sub-section (19) of Section 65 w.e.f. 1-7-2003, which includes service of a commission agent. As defined in Explanation (a) to sub-section (19) of Section 65 commission agent is a person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for consideration, and includes any person who, while acting on behalf of another person: deals with goods or services or documents of title to such goods or services; or collects payment of sale price of such goods or services; or guarantees for collection or payment for such goods or services; or undertakes any activities relating to such sale or purchase of such goods or services. This clearly shows that the activity of mere procurement of purchase orders for the principal on commission basis of a commission agent is treated separately by the Parliament from the activities of a clearing and forwarding agent. Activity of procuring orders is thus independent of clearing and forwarding operations. The agents doing these activities can be different. Moreover, clearing and forwarding operations do not flow directly or indirectly from mere procurement of orders. There is no obligation on the person procuring orders as a commission agent for the principal, only by virtue of that agency, to carry out clearing and forwarding operations in respect of the goods which are to be supplied pursuant to the orders so procured."

3. Learned DR reiterates the findings of the Commissioner (Appeals). He submits that on perusal of the various clauses of the agreement, it is clearly evident that the appellants are engaged in the various activities other than the procurement of orders and they are clearly covered under the services of clearing and forwarding agent. He relied upon the decision of the Tribunal as under:-

(1) Commissioner of CCE, Jaipur vs. Chopra Brothers [2006 (3) STR 672 (Tri-Del.)]

(2) Vijay Enterprises vs. CCE, Belgaum [2007 (7) STR 339 (Tri-Bang)]

4. After hearing both the sides and on perusal of the records we find that the appellant under their letter dated 14.2.04 narrated the activities undertaken by them. The relevant portion of the said letter is reproduced below for proper appreciation:

"1. M/s. Jitendra nath & Sons are the Selling Agents of Raymond Ltd.

2. Jitendra nath & Sons are booking orders from various dealer and sub dealer of the state, conveying the orders to Raymond, who in turn directly despatch the goods to the respective Dealers under Invoice of Raymond Ltd.

3. Jitendra nath & Sons is neither receiving any goods from Raymond, nor arranging the storage or / warehousing of goods. We are also neither receiving any despatch orders the goods, from Raymond nor arranging for any despatch of the goods, since were are not physically handling any goods.

4. Further we are also not preparing any Invoices on behalf of Ramond Ltd. Since the same is done directly by Ramond Ltd.

5. Jitendra Nath & Sons has also not handled or sold any goods on consignment basis for Raymond Ltd. or for any other manufacturer."

5. We find that the adjudicating authority passed the order following the decision of the Tribunal in the case of Prabhat Zarda Factory (supra). Commissioner (Appeals) proceeded ~~pm~~ on the basis of various clauses of the agreement and it was interpreted that the appellants are not only engaged merely for procurement of orders on commission basis and they are clearing and forwarding agents. We are unable to agree with the findings of the Commissioner (Appeals). We find that the appellant had written a letter to the Deputy Commissioner stating about their activities which was not refuted by the Revenue. Larger Bench of the Tribunal in the case of Larsen and Toubro Ltd. (supra) over-ruled the decision of Prabhat Zarda Ltd. In view of that, we find that the order passed by the Commissioner (Appeals) is

not sustainable. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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