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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/348 /2006 - CU[DB] Date 24/11/2008

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 GOYAL COLOR LAB Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/~~343~~ 353/08 **CU[DB]** dated 17.11.08

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

M/S GOYAL COLOR LAB

158-159,NEHRU BAZAR,JAIPUR (RAJASTHAN)

2. Adv. / Consult

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:17.11.2008

Service Tax Appeal No.348 of 2006

Arising out of the order in appeal No.43 (MPM)ST/JPR-I/2006 dated 29.5.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant | Respondent

C.C.& C.Ex., Jaipur I vs. M/s Goyal Colour Lab.

Appearance:

Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue and Shri Ravi Raghvan, Advocate for the respondent

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

Final Order No. ST/353/08

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 43 (MPM)ST/JPR-I/2006 dated 29.5.2006.

2. Heard both sides.

3. The respondent is having a photography lab and undertakes job of various works relating to photography. In certain cases, they directly deal with "customers" and take the photographs, develop the negatives and give the prints. In other cases, they receive negatives from the studios/free lancers/professional photographers and undertake various developing activities and deliver the prints to the said studios/professional photographer and free lancers. They are paying service tax in respect of services rendered directly to 'Customers'. The issue relates to whether the services rendered by the respondent to the studios/professional photographers/free lancers will also attract service tax at the hands of the respondent.

4. The original authority held that the respondents are service providers and accordingly, confirmed the service tax amounting to Rs.29,18,323/- and imposed a penalty of equal amount under Sections 75 and 78 and also in addition imposed penalty under Section 76.

5. Commissioner (Appeals) however, held that the studios professional photographers/free lancers cannot be treated as customers. He relied on certain certificates of experts in this regard. Commissioner (Appeals) in paragraph 7.2 has held as follows:

> *"7.2 I also find that, the adjudicating authority has not discussed the expert's report and certificate produced by the appellants, therefore, the impugned order is not speaking. In this, regard, I find that, the appellant has submitted the copies of certificate issued to various studios/professional photographers, by the various Central Excise Officers, evidencing for payment of service tax under the category of photographer, the adjudicating authority has not discussed the expert's report and certificate produced by the appellant, therefore, the impugned order is not speaking."*

After holding that the adjudicating authority has not issued a speaking order, he has chosen to set aside the order and he has not given any opportunity to adjudicate the issues afresh.

6. Learned Advocate submits that the various studios act as collection centres of negatives and transmit to the lab of the respondent for further processing and they are not required to pay service tax in terms of ST Circular No.37/5/01 dated 27.12.2001. He also submits that Commissioner (Appeals) has satisfied himself from the certificates placed before him that the studios free lancers/photographers were registered with the excise authorities and have paid service tax.

7. Learned DR submits that the Commissioner (Appeals) holding that the studios/free lancers and professional photographers cannot be treated as customers is erroneous. Further, having held that the original authority has not issued a speaking order he should have remanded the matter to the original authority.

8. We have carefully considered the submissions from both sides. The observation of the Commissioner (Appeals) that the adjudicating authority has not issued a speaking order is relevant. He ought to have given an opportunity by remanding the matter to the original authority to rectify the deficiency. To enable the same, we set aside the order of the Commissioner (Appeals) and that of the adjudicating authority and remand the matter to the adjudicating authority to consider the entire issues afresh after granting reasonable opportunity of hearing. All the issues are left open. We clarify that we are not expressing any opinion on the merits of the case.

9. The appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K.Das)
Member (Judicial)

scd/