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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/431 /2006 - CU[DB] Date 27/11/2008

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

To :
MIDITECH(P)LTD
B-BLOCK,KAILASH APARTMENT,LALA LAJPAT RAI
ROAD,N.DELHI
110048

MIDITECH(P)LTD Appellant

Vs

C.C.E.(A)SERVICE TAX DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/364 2008 CU[DB]** dated 11.11.08 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.(A)SERVICE TAX DELHI I
C.R.BUILDING,I.P.ESTATE,N.DELHI
2. Adv. / Consult : Sh. Vindo Kumar, CA
Shiv Sushil Bhawan, D-219, Vivek Vihar Phase – I
New 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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 431 of 2006

[Arising out of Order-in-Appeal No. 42/ST/DLH/2006 dated 6.6.2006 passed by Commissioner (Appeals) Central Excise & Service Tax, Delhi]

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.

M/s. Meditech (P) Ltd. — Appellant

Vs.

Commissioner of Service Tax (Appeals) Delhi I — Respondent

Appearance:

Mr. Vinod Kumar, Consultant 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 Decision : 11.11.2008

Final **ORDER NO.** ST/364/08

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

The appellant filed this appeal against rejection of refund claim of Rs.45,33,068/- under Section 11B of the Central Excise Act, 1944 as applicable to service tax by virtue of Finance Act, 1994 on the ground of unjust enrichment.

2. The relevant facts of the case in brief are that the appellants were engaged in production of TV serial / programme for various TV channels. During the period 18.6.03 to 31.3.04 the appellant wrongly paid the service tax under the category of "Video Production Agency" service. Subsequently, they filed the refund claim. The Deputy Commissioner of Central Excise rejected the refund claim on merit as well as on the ground of unjust enrichment. The Commissioner (Appeals) held that the production and selling of TV serial to TV channels were not chargeable to service tax during the material period and modified the adjudication order to that extent. However, he has rejected the refund claim on the ground of unjust enrichment.

3. Learned advocate on behalf of the appellants submits that the appellants entered into an agreement with Star India (P) Ltd. for production of TV serial / programmes in the TV channels. He drew the attention of the Bench to the relevant portion of the agreement. He submits that the client Star India (P) Ltd. paid composite price. There is no scope for charging of service tax which was introduced after agreement. He also submits that appellants erroneously

mentioned the separate amount for service tax in the Bills, which have no relevancy as their tax as they charged composite charges as per agreement. He also drew the attention of the Bench the copy of certificate issued by the Star India (P) Ltd. He relied upon the various decision of the Tribunal.

4. Learned DR on behalf of the Revenue reiterates the findings the Commissioner (Appeals). He submits that it is revealed from the invoices that they have charged service tax from the customers. Therefore, the appellant is liable to establish that incidence of tax has not been passed to the customers. He also submits that the appellant failed to produce any evidence in the nature of books of accounts, balance sheet, etc. that the amount of tax was not recovered from the customer. He relied upon the decision of Hon'ble High Court and Tribunal.

(1) JCT India Ltd. vs. CCE
[2006 (202) ELT 773 (P&H)]

(2) Skycell Communication Ltd. vs. CC, Chenai
[2007 (216) ELT 702(Tri-Chennai)]

5. After hearing both sides and on perusal of the records, we find that it is evident from the invoices that the appellant charged service tax separately. The contention of the appellant that the alleged invoices indicate the composite price and therefore the charging of service tax separately in the invoice bearing no consequence. We are unable to accept the contention of the learned advocate. We find that section 12 A

of Chapter II A of the Central Excise Act, 1944 is applicable by virtue of Section 83 of the Finance Act, 1944. Chapter IIA of the Central Excise Act, 1944 provides provision for "indicating amount of duty in the price of goods, etc., for purpose of refund and ~~creating~~ crediting ~~interim~~ certain amounts to the Fund". Section 12 A of the Central Excise Act, 1944 provides every person who is liable to pay duty of excise on any goods shall, at the time of clearance of goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount for such duty which form part of price at which such goods are to be sold. In this case, the appellant mentioned the amount of tax in their invoice. Therefore, by virtue of Section 12B of the said Act presumption that the incidence of duty has been passed to the buyer.

6. The Hon'ble P & H High Court in the case of JCT Ltd. (supra) held that though there was no increase in the selling price, burden of duty was already was passed on to customer, since selling price was inclusive of duty, doctrine of unjust enrichment is applicable. In the case of Skycell Communication Ltd.(supra), the Tribunal held that sale invoice is the important evidence for discharging the presumption.

6.2 We find that in the present case the appellant had not produced any evidence in the nature of books of accounts or the certificate to show that incidence of tax had not been passed to the customers. It is seen from the agreement that appellant will be responsible for payment of all tax and ensure applicable under existing law on all kinds paid to them. So, the submission ~~intention~~ of learned Advocate that the composite price was charged to the customer, which has no bearing in respect of payment of tax, is without any substance.

7. The learned Advocate relied upon various decisions of the Tribunal, which are not relevant in the facts and circumstances of the case. In the case of Hexacom (I) Ltd. vs. CCE, Jaipur [2006 (3) STR 131 (Tri-Del)], It is seen that the refund was claimed by the Customers and in the present case, the refund was claimed by the service provider and therefore, this case is not applicable herein. In the case of CCE, Kolkata I vs. M.A. Financial Services Pvt. Ltd. [2006 (2) STR 350 (Tri-Kolkata)], service tax was found to have been collected twice on same transaction. In the case of UP Twiga Fiberglass Ltd. vs. CCE, Noida [2005 (66) RLT 161 (CESTAT-Del), on verification from their record, it was found that the burden was not passed on the transporter and it was borne by the appellant. In the present case the appellant have not produced any evidence to show that incidence of duty was not passed to the customers. Therefore, the ratio of the said decision is not applicable in the present case.

8. In view of the above discussion, we do not find merit in the appeal filed by the appellant. Accordingly, the appeal is rejected.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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