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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/441 /2006 - CU[DB] Date 01/12/2008

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

To :
M/S TECHNICA COLOR LAB.

75,RAJPUR ROAD,HIMALAYA
APARTMENT,DEHRADUN,UTTARANCHAL.

M/S TECHNICA COLOR LAB. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/369/08 **CU[DB]** dated 20.11.08

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. MEERUT I

   MANGAL PANDEY NAGAR,MEERUT

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. Ra[illegible]raman'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 NEW DELHI

Service Tax Appeal No.441 of 2006

[Arising out of Order-in-Original No.51/05(ST/Photo/04) dated 14.07.2005 of the Commissioner of Customs & Central Excise (Appeals), Meerut-I]

Date of Hearing/ Decision:20.11.08

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? :
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. Tehnnica Colour Lab. ...Appellants
[Rep. by Shri J.K. Mittal, Shri A. Upadhyay & Sh.Ravi Sharma, Advocates]

Vs.

CCE, Meerut-I ....Respondent
[Rep. by Shri L.B. Yadav, DR.]

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

Final

Order No. S7/369/08/Dated:20.11.2008

Per P.K. Das:

After hearing both the sides and on perusal of the records, we find that the issue involved in this case is as to whether the value of material consumed in the process of developing and printing of photographs was excludable from the gross amount charged for the service of photography for the purpose of calculating service tax. We find that the Tribunal in the case of M/s. Delux Colour Lab. Pvt. Ltd. & Another Vs. CCE, Jaipur vide Final Order No.ST/285 to 288 of 2008 dated 22.10.2008 held that the value of materials cannot be ~~calculated~~ included while computing the value of the services. The relevant portion of the said decisions is reproduced below:-

> "12. It would thus appear that the decision in BSNL case lays down the law that works contract (and also catering contract) involves the element of both sale and service contract and that the service and sale elements can be split up. That being so, we do not find any merit in the submission of the Revenue that the decision in BSNL case cannot be treated as an authority on the issue of service tax. If the photography service is a 'works contract', it would follow that if involves the element of both sale and service, and the sale portion of the activity or transaction cannot be included in the taxable value of service. There cannot be any doubt, in view of sub-clause (b) of clause (29-A) of Article 366, that deemed sale of the materials takes place in the rendering of photography service and, therefore, the value of the materials cannot be included while computing the value of the service. 'Sale' and 'Service' can not stand in the same box. Sale cannot be treated as service and vice versa."

2. The Tribunal held that the non-inclusion of the value of materials used in the photography is ~~not~~ in accordance with law. We agree with the decision of the Tribunal in the case of Delux Colour Lab. Pvt. Ltd. & Another (supra). So, the demand of duty and penalties are not

sustainable. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 20.11.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.