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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/449 /2006-455 /2006 - CU[DB] Date 03/12/2008
ST/204 - 214/08

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

To :
M/S SOOD STUDIOS PVT LTD
OPP OLD DMC,CIVIL LINES,LUDHIANA.

M/S SOOD STUDIOS PVT LTD Appellant
Vs
C.C.E. LUDHIANA. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/375-392/08 CU[DB] dated 25-11-08 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. LUDHIANA.
   F BLCOK,RISHI NAGAR,LUDHIANA.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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), Thyagarava 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)

17 M/S C.L.GUPTA COLOR LAB
BHARAT NAGAR CHOWK,LUDHIANA.

P.T.O.

18. M/S SOOD STUDIOS PVT LTD
SAMRALA CHOWK,LUDHIANA.

19 M/S VAHOO COLOR LAB
FOUNTAIN CHOWK,LUDHIANA.

20. M/S FAMOUS PHOTO STORE
BROWN ROAD,SUBHANI BUILDING,LUDHIANA.

21. M/S SOOD PHOTOGRAPHERS
REIKHY CINEMA ROAD,LUDHIANA.

22. M/S VAHOO COLOR LAB
MATA RANI CHOWK,LUDHIANA.

23. M/S S.S. DIGITAL IMAGES.
OPP. OLD D.M.C.LUDHIANA (PB)

24. M/S FAMOUS COLOR LAB.
DANDI SWAMI CHOWK,LUDHIANA (PB)

25. M/S FOTO FAST COLOUR LAB.
TEHSIL ROAD, JAGRAON,DISTT. LUDHIANA.

26. M/S AMUL STUDIO & COLOR LAB.
Opp. P.N.B. Gill Road
Ludhiana

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram,
NEW DELHI

COURT NO. III

Service Tax appeal No. 449 to 455 of 2006 & 204 to 214 of 2008

(Arising out of order in Revision No. 1/ST/Commissioner/LDH/06 dated 16.6.2006 & 1-11/ST/Commissioner/LDH/08 dated 8.1.2008 both passed by the Commissioner of Central Excise, Ludhiana)

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 ?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether Order is to be circulated to the Departmental authorities?

M/s. Sood Studios Pvt. Ltd.,
M/s. Sood Photographers,
M/s. Sood Studios,
M/s. C.L. Gupta Color Lab.,
M/s. Vahoo Color Lab.,
M/s, Famous Photo Store,
M/s. S.S. Digital,
M/s. Famous Color Lab. (P) Ltd.,
M/s. Shivam Color Lab.,

M/s. Foto Fast Color Lab.,
M/s. Amul Studios & Color Lab., Appellants
Reptd. By Shri Sudhir Malhotra, Advocate

Vs.

CCE, Ludhiana **Respondent**
Rep. by Shri A.K. Madan, D.R.

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

Date of Hearing/Date of decision: 25.11.08

Final **Order No.** S T/375-392**/2008**

Per M. Veeraiyan:

1.1. The 7 appeals (ST-449 to 455 of 2006) arise out of Order-in-Revision No. 1/ST/Commissioner/LDH/06 dated 16.6.2006.

1.2. The 11 appeals (ST-204 to 214 of 2008) arise out of Order-in-Revision No. 1-11/ST/Commissioner/LDH/08 dated 8.1.2008.

1.3. All these appeals involve a common issue and, therefore, are being dealt with by a common order.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

The appellants are rendering services in relation to photography and they are registered with the Central Excise authorities. The original authority allowed the deduction towards value of materials used in relation to the said photography services in determining the assessable value and dropped the proceedings on the show cause notices proposing to include the said value for purpose of demand service tax. The

Commissioner in exercise of his revision powers issued notices and decided all these cases by confirming demand of service tax on the portion of value of the materials involved. Hence, the appellants are in appeal before us.

4. Learned advocate submits that the issue is decided by the Tribunal in the case of Deluxe Colour Lab. Pvt. Ltd. by Final Order No. ST/285 to 288/08 dated 22.10.2008 holding that photography service is in the nature of works contract and it involves elements of both, sale and service and that service tax is not leviable on the sale portion.

5. Learned D.R. reiterates the findings of the Commissioner.

6. We have carefully considered the submissions from both the sides. The issue in these appeals is clearly covered by the decision of the Tribunal in the case of Deluxe Color Lab. (P) Ltd. (supra). In this regard relevant portions from the said order are 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 it 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' cannot stand in the same box. Sale cannot be treated as service and vice versa.

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16. The pronouncement of law by the Supreme Court is binding on all Courts and authorities under Article 141 of the Constitution of India. Any decision of the High Court or the Tribunal or even the Supreme Court of lesser Bench strength has to be understood, read down (if necessary) and applied in the light of the binding precedents of the Supreme Court. As observed above, the dispute involved in these appeals is covered by the decision in BSNL case and, therefore, it is not necessary to make comments on the various decisions cited by the parties, referred to above. We are of the view that in the light of the alw laid down by the Supreme Court in BSNL case, the matter has to be reconsidered de novo by the authorities below.

17. One issue which we may deal with relates to limitation. According to the appellant, the impugned demands have been confirmed invoking the extended period of limitation, but as the appellants did not commit any fraudulent act nor suppressed any information from the Department much less with intention to evade the service tax, the non-payment, if any, by reason of non-inclusion of the value of the sale portion of the contract, that is, the non-disclosure of the gross total amount including the value of the materials, was on account of bonafide belief that service tax liability relates to the service part of the contract which has already been discharged by the appellants as per Notification No. 12/2003-ST. The case of the Revenue, on the point of limitation, on the other hand, is that the non-inclusion of the value of photography materials in the value of the taxable service was deliberate with intent to evade service tax. In view of our conclusion on the main dispute as to inclusion of the value of materials in the total value of taxable service

in favour of the appellants, it is clear that non-inclusion of value of materials being in accordance with law, the extended period of limitation cannot be invoked, and the question of limitation too has to be reconsidered while considering the appellants' case."

7. In the light of the above, the orders of the Commissioner reversing the decisions of the original authority to exclude the value of materials sold/deemed to have been sold for purpose of demanding tax are not sustainable. Therefore, the orders of the Commissioner are set aside and the orders of the original authority restored.

8. Appeals are disposed of in the above terms.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

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