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Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/510 /2006 - CU[DB] Date 04/12/2008
ST/374/07

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

To :
M/S JAIN BROTHERS
S-23, GTB COMPLEX, T.T.NAGAR, BHOPAL
462001

M/S JAIN BROTHERS Appellant
Vs
C.C.E.BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/401-02/08 **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.BHOPAL
   48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL.
2. Adv. / Consult
   MR.Z. U. ALVI
   D-8,BDA COLONY, ADJACENT GARUDA TRAVELS, KOH-E-FIZA BHOPAL-01
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-1
15. Office Copy
16. Guard file
17. M/S Ppunjab Color Lab (P) Ltd
    66-67 Chaitanya Market Hamidia Road
    Bhopal

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No. 2, R.K. Puram,
NEW DELHI

COURT NO. III

Service Tax appeal No. 510 of 2006 & 374 of 2007

(Arising out of order in appeal No. 72-ST/BPL/2006 dated 14.7.2006 & 03-ST/BPL/2007-08 dated 9.4.2007 both passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal)

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? — NO
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 ? — Seen
4. Whether Order is to be circulated to the Departmental authorities? — Yes

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M/s. Jain Brothers,
M/s. Punjab Colour Lab., — Appellants
Reptd. By Shri H.S. Mew, Advocate

Vs.

CCE, Bhopal — **Respondent**
Rep. by Shri A.K. Madan, D.R.
& Shri L.B. Yadav, 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.** ST/401 – 402**/2008**

Per M. Veeraiyan:

Heard both sides.

2. The appellants are rendering photography services falling under Section 65(105) (zb). The dispute involved in the present appeals is, regarding the valuation of the said services. The department has included the value of printing paper & chemicals which have gone into preparation of photoprints. Learned advocate relies on the decision of the Tribunal in the case of Deluxe Color Lab. (P) Ltd., Final Order No. ST/285 to 288/08 dated 22.10.2008 wherein it has been held that photography service is a works contract involving both the elements of sale and service and the value of sale portion cannot be subjected to service tax.

3. We have carefully considered the submissions from both the sides. The issue has already been decided by the Tribunal in the case of Deluxe Color Lab. (P) Ltd. (supra). In this regard, relevant portions from the said order 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 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.

…………………..

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 e 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."

4. In view of the above, we allow the appeals on merit and hold that the portion of value relating to sale is not to be included for levy of service tax. The question of applying extended period of limitation and imposition of penalties does not arise. As the authorities below have gone on the understanding that the entire value of both service and sale has to be taxed and have not gone into the correctness of the quantum of abatement towards value of goods sold, we feel that it would be appropriate to remand the matter to the original authority to the limited

purpose of determining the valuation in terms of the above decision and consequent demand of differential tax, if any, as per the said decision.

5. Appeals are disposed of by way of remand as indicated above.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

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