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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 503 2007 - CU[DB]   Date 18/12/2008

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

To :
S.P.SHARMA
GOVT CONTRACTOR 17121, KANYA MANDIR,
AGGARWAL COLONY, BATHINDA.(PB)
S.P.SHARMA   Appellant
Vs
C.C.E. LUDHIANA   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/426 **2008 CU[DB]** dated 05.12.08 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
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.G.S.BHANGOO
   631 (FF), SECTOR 11B, CHANDIGARH
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. Nidhyshak 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-1
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:5.12.2008

Service Tax Appeal No.503 of 2007

Arising out of the order in appeal No.222/ST/Appl/CE/Ldh/2007 dated 10.8.07 passed by the Commissioner (Appeals) , Central Excise & Customs, Jalandhar, Chandigarh.

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?	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

Appellant	Respondent
Shri S.P. Sharma vs.	C.C.E., Chandigarh

Appearance:

Shri V. Kakaria, Advocate for the appellant
Shri A.K. Madan , Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. ST/426/08

Per P.K. Das:

Heard both sides and perused record.

2. It is seen from letter dated 17.1.2005 of Senior Executive Engineer/Plant, G.N.D.T.P. that the appellant was allotted for work of white-washing, distempering, painting of various buildings in Plant and compound area at GNDTP. Show cause notice proposed demand of service tax for the period from September 2005 to June, 2006 under the category of "Maintenance and Repair". The Adjudicating authority confirmed the demand of tax and imposed penalty which was upheld by the Commissioner (Appeals).

3. Learned Advocate on behalf of the appellant submits that the appellant is engaged mainly in the activity of painting. He further submits that the activity of painting is more specific under the category of "Construction of commercial/residential complexes" service effective from 16.6.05. He submits that it cannot be treated as repair under the "Maintenance and Repair Service", which is not applicable herein, and therefore, the demand of tax and penalty are not sustainable.

4. Learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that the activities undertaken by the appellant are clearly repair and maintenance of the immovable property which are covered within the definition of the "Maintenance and Repair".

5. After hearing both sides and on perusal of the record,we find that the main contention of the learned Advocate is that the service under the category of "Construction of residential/commercial complex" may apply the activities of glazing, plastering, painting, floor and wall tilling. On perusal of the impugned order of the Commissioner (Appeals), we find that there is no finding on the claim of the appellant. So it is required to examine the claim of the appellant as to whether this activity would come within with purview of

the "Construction of Residential/Commercial complex" service, while deciding the appeal. We noticed that this submission of the learned Advocate was taken in the appeal before the Commissioner (Appeals). Therefore, we set aside the impugned order and matter is remanded to the Adjudicating authority to decide afresh after considering the submission of the appellant. Appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/