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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/382/2007 - CU[DB] Date 22/12/2008

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

To :
M/S JEGSON PUBLICITY
1E/15, JHANDEWALAN EXTENSION, NEW DELHI
110055

M/S JEGSON PUBLICITY Appellant
Vs
C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/436/08 **CU[DB]** dated 17.12.08 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.S.T. DELHI
   17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
2. Adv. / Consult : Sh. JK Mittal, Adv
   A-15 3rd floor Flat No 3A Priyadarshini Vihar, Delhi - 92

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. Nirdeshak 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Misc. Application No. 746 of 2008
Service Tax Appeal Nos. 382 of 2007

Date of Hearing : 4.12.2008
Date of Decision: 17.12.2008

[Arising out of Order-in-Original No. 2/VKG/2007 dated 12.4.2007 passed by Commissioner of 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? : Yes

2. Whether it should be released under Rule 27: of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? Yes

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

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

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M/s. Jagson Publicity — Appellants

Vs.

Commissioner of Service Tax
Delhi I — Respondent

Appearance:

Mr. J.K. Mittal, Advocate for the Appellants
Mr. Fateh Singh, DR for the Respondent

<u>**CORAM**</u>:

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

Final **ORDER NO. 57/436/08**

Per M. Veeraiyan (for the Bench):

1. This is an appeal against the order of the Commissioner No. 2/VKG/2007 dated 12.4.2007.

2. Heard both sides.

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

a) The appellant is a registered service tax assessee rendering services as "advertising agency". They are engaged in the work of painting messages on boards on rental basis for DAVP; the messages are in the form of readymade design, art work and messages furnished by DAVP; the work of painting and renting of boards are at sites belonging / provided by DAVP. A show cause notice dated 8.4.2004 was issued *inter-alia* proposing demand of service tax of Rs. 5,880/- in respect of services rendered by the appellant to Directorate of Advertising and Visual Publicity (DAVP).

b) The original authority held that DAVP was not a commercial concern and therefore, no service tax was payable in view of Board's Circular No. 341-43/96 TRU dated 31.10.1996. Accordingly, he dropped the demand of Rs. 5,880/- .

c) Commissioner issued a notice dated 3.1.2006 and passed an order dated 12.4.2007 and held that the appellant was required to pay Rs.5,880/- as service tax along with interest on the said amount.

4. Learned advocate challenges the order of the Commissioner on the following grounds:

a) The assessee raised the issue of taxability itself claiming that their activities do not fall under the ambit of 'advertising agency'. However, Commissioner refused to consider the defence submission on the ground that the show cause notice issued for review is limited to the order passed by the Assistant Commissioner based on the applicability of the Board's Circular and that the taxability of these services was not disputed by the assessee during the adjudication proceedings and there was no finding by the original authority on the said issue.

b) Commissioner has passed the order after the expiry of two years from the date i.e. 31.12.2004 when the original order was sought to be revised was passed. This is against the specific provision of section 84 of the Finance Act, 1994 which stipulates that revision-order is required to be passed within two years from the date of the order.

5. Learned DR reiterates the finding of the Commissioner.

6.1 We have carefully considered the submissions from both the sides. The section 84 of the Finance Act, 1994 reads as follows:

> "**84.Revision of orders by the Commissioner of Central Excise.** –
>
> (1) The Commissioner of Central Excise may call for the record of a proceeding under this Chapter in which an adjudicating authority subordinate to him has passed any decision or order subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Chapter, pass such order thereon as he thinks fit.
>
> (2) ....
>
> (3) ....
>
> (4) ....
>
> (5) No order under this section shall be passed after the expiry of two years from the date on which the order sought to be revised has been passed."

From the reading of the above provision, it is clear that no order under section 84 can be passed 'after the expiry of two years from the date on which the order sought to be revised has been passed'. On this ground itself, the order is liable to be set aside.

6.2 Further we find that the show cause notice was issued proposing demand of service tax in respect of service charges received from DAVP under the head advertising service. The original authority has dropped the proceedings. The Commissioner issued notice for reversing the order of the original authority, therefore, the assessee, in defence, is entitled to raise any legal grounds in support of their claim that the demand is not sustainable. He ought to have dealt with the submissions that no tax was leviable on the impugned transactions under the head 'advertising services'. On this ground also, the order is liable to be set aside.

6.3 We are also surprised that the review proceedings have been initiated when the disputed amount involved is not very significant. We are equally surprised that the appellant has taken the trouble of filing the appeal when the disputed amount is insignificant.

7. However, on the grounds already mentioned, the appeal requires to be allowed, and the same is allowed with consequential relief.

(Pronounced in the open Court on 17/12/06)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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