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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/539 /2007-542 /2007,639 /2007 - CU[DB] Date 05/01/2009

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

To :
M/S GYARSI LAL & COMPANY
C/O SHRI KRISHAN ROLLING MILLS (JAIPUR)LTD.
37, INDUSTRIAL AREA, JHOTWARA JAIPUR
M/S GYARSI LAL & COMPANY Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/441-45/08 **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.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.ATUL GUPTA, CS
   B-1/1289 A VASANT KUNJ, NEW DELHI – 70
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 ANUP SINGH & COMPANY
C/O SHRI KRISHAN ROLLING MILLS (JAIPUR)LTD. 37,
INDUSTRIAL AREA, JHOTWARA JAIPUR

18. M/S MADAN LAL & COMPANY
C/O SHRI KRISHNA ROLLING MILLS (JAIPUR)LTD. 37
INDUSTRIAL AREA, JHOTWARA JAIPUR

19. M/S RAMJAS & COMPANY
C/O SH KRISHNA ROLLING MILLS(JAIPUR) LTD, 37,
INDUSTRIAL AREA, JHOTWARA, JAIPUR.

20. M/S DINESH KUMAR & COMPANY
C/O SHRI KRISHNA ROLLING MILLS (JAIPUR)LTD. 37
INDUSTRIAL AREA, JHOTWARA JAIPUR

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

SERVICE TAX APPEAL NO. 539 to 542 & 639 OF 2007

[All appeals arising out of Order-in-Appeal No.130-134/GRM/CE/JPR-I/2006 dated 29.6.2007 passed by the Commissioner (Appeals), Central Excise, Jaipur]

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 the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	NO
2.	Whether it would 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?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Gyarasi Lal & Co.,
M/s. Anup Singh & Co.,
M/s. Dinesh Kumar & Company,
M/s. Madan Lal & Company,
M/s. Ramjas & Co., Appellants

Vs.

Commissioner of Central Excise,
Jaipur-I Respondent

Appearance:

Shri Atul Gupta, C.S. for the appellant;
Shri Fateh Singh, Departmental Representative, for the Revenue,

Coram:

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

Date of Hearing/decision: 17th December, 2008

FINAL ORDER NO. S7/441 to 445/08 **dated** ________

Per M. VEERAIYAN:

These 5 appeals arise out of a common Order-in-Appeal No. 130-134/GRM/CE/JPR-I/2006 dated 29.6.2007.

2. Heard both sides and perused the records.

3. The appellants were supplying man power to different industries on contract basis. The original authority held them as rendering the services of "Manpower Recruitment Agency" and confirmed the demands of service tax and imposed penalties under various sections. The period of dispute in each of these cases is between January, 2002 to December, 2004. The Commissioner (Appeals) upheld the orders of the original authority.

4. Learned Company Secretary, appearing for the appellants, submits that service tax was levied on manpower recruitment services only from 16.6.2005. In all these cases the period of dispute is prior to 16-6-2005 and during this period there was no service tax on supply of manpower on contract basis.

5.1. We have carefully considered the submissions from both sides. The definition of manpower recruitment service as it existed prior to 16.6.2005 and, the definition w.e.f. 16.6.2005 are reproduced below:-

"**Statutory definition prior to 16.06.2005** 'manpower recruitment agency' means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, to a client.

Statutory definition with effect from 16.06.2005

'manpower recruitment or supply agency' means any commercial concern engaged in providing any service, directly or indirectly in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client."

5.2. Board vide Circular No. B1/6/2005-TRU dated 27th July, 2005 has clarified the scope of these services prior to 16.6.2005 and w.e.f. 16.6.2005. The relevant portions of the clarification are as follows:-

"22.1 Prior to 16.6.2005, service tax was leviable on services provided by manpower recruitment agencies in relation to recruitment of manpower. Amendments have been made to levy service tax on temporary supply of manpower by manpower recruitment or supply agencies.

22.2 A large number of business or industrial organizations engage the services of commercial concerns for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Services rendered by commercial concerns for supply of such manpower to clients would be covered within the purview of service tax.

22.3 In these cases, the individuals are generally contractually employed by the manpower supplier. The supplier agrees for use of the services of an individual employed by him to another person for a consideration. The terms of the individual's employment may be laid down in a formal contract or letter of appointment or on a less formal basis. What is relevant is that the staff are not contractually employed by the recipient but come under his direction."

6. On carefully going through the definitions of manpower recruitment agency as prevailing prior to 16.6.2005 and w.e.f. 16.6.2005, we find that supply of manpower is not covered prior to 16.6.2005 for the purpose of levy of service tax. A reading of the orders of the original authority in these cases indicate that the appellants were engaged in supply of their own labour on a contract basis and billing the clients towards the salary and other allowances of such labour forces. Board's Circular No. B1/6/2005-TRU dated 27th July, 2005 is also to the effect that the supply of man power has been brought under service tax with effect from 16-6-2005 only. Under these circumstances, we hold that the appellants are not liable to pay service tax as ~~the~~ manpower recruitment agency during the disputed period.

7. Appeals are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

Dated 17th Decemebr, 2008

RK