

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

Appeal No. ST/232 /2007-SM[BR]

Date 06/02/2008

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

To :
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI

Appellant
Vs
Respondent

M/S KEANE WORLDZEN INDIA (P) LTD.

I am directed to transmit herewith a certified copy of Final order No.268/ 2008-SM [BR] dated 7.12.2007
passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S KEANE WORLDZEN INDIA (P) LTD.

6TH FLOOR, UNITECH TRADE CENTRE, SECTOR - 43,
SUSHANT LOK, PHASE I, GURGAON.

2. Adv. / Consult SHRI. NANDAKUMAR S. LAW ASSOCIATES

5a/198-199[basement] w.e.a.
karol Bagh, new delhi-110005

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, PRINCIPAL BENCH, NEW DELHI**

COURT NO.III.

Appeal No.232 of 2007-SM (BR)

(Arising out of the Order-in-appeal No.03/ST/DLH/2007 dated 31.1.2007 passed by the Commissioner (Appeals), Central Excise, New Delhi.)

For approval and signature:

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? :
 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? :
-

Commissioner of Service Tax, Delhi

Appellant.

Versus

M/s. Keane Worldzen India Pvt. Ltd.

Respondents

Appearance

Shri A.K. Rastogi, Authorised Departmental Representative (DR) for the appellants.

Rep. By none on behalf of the respondent.

CORAM: Hon'ble Mr. P.K.Das, Member(Judicial)

Date of decision:7.12.2007.

Final Order No. 268/08-SM(BD)

Per P.K. Das:

The Revenue filed this appeal against the order of the Commissioner (Appeals) whereby the adjudication order was set aside and condoned the delay in filing declaration of export of service and the adjudicating authority was directed to verify the claim of export of service of the respondent.

2. Heard the Id. DR on behalf of the Revenue. None appeared on behalf of the respondent.

3. Ld. DR reiterates the Grounds of Appeal. He submits that the Notification stipulates the procedures for claiming rebate of service tax, which was not ~~filed~~^{followed} by the respondent and, therefore, the claim is not acceptable. He further submits that the Commissioner (Appeals) condoned the delay in filing declaration, which is beyond the scope of Notification and, therefore, the order of the Commissioner (Appeals) is not sustainable.

4. After hearing the Id. DR and on perusal of the records, I find that vide Notification No.12/2005-ST dated 19.4.2005, Export of Service Rules, 2005 effective from 15th March, 2005 extended rebate on export services. Para-3.1 of the said Notification provides that the provider of textile service to be exported shall, file a declaration with the jurisdictional Asstt. Commissioner of Central Excise or Dy. Commissioner, prior to date of export of taxable

service. In this case, the respondent filed the declaration dated 6.12.2005 subsequent to export of service. The Commissioner (Appeals) condoned the delay of filing application on the ground that introduction of the Notification is very new to the service industry. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

“I find that rebate on export services extended by virtue of Notification No.12/2005-ST dated 19.4.2005 and Export of Services Rules, 2005 made effective from 15.3.2005, were very new to the service industry and the appellants have also submitted that the delay in filing the requisite declaration occurred due to lack of awareness of the subject new provisions of the law. It is not a disputable fact that the appellants are registered as Software Technology Park Unit and engaged in the export of services. I find that lapse is only procedural in nature and declaration though filed subsequent to export of services can still be verified by the departments and any delay in filing shall not come in the way of substantial benefit if any, arising out of export of services. In view of the above, I have no other option but to follow the principle laid down vide various aforesaid judgments that substantive benefit cannot be denied on account of procedural deviations/irregularities. I, therefore, set aside the impugned order and condone the delay with direction to the adjudicating authority to consider the claim of the appellants after verifying the

substantial compliance of substantive conditions of the subject Notification.”

5. In view of the above, I find that there is no dispute of export of goods and the alleged irregularity was occurred just introduction of the Notification for rebate on export service. Therefore, the Commissioner (Appeals) rightly condoned the delay of filing declaration. Hence, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 7.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.