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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/104 /2007 - CU[DB] Date 12/01/2009

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

To :
M/S AGARWAL COLOR LAB

SHOP NO.- A-10, NANDINI ROAD, POWER HOUSE
CHOWK, BHILAI (C.G.)
M/S AGARWAL COLOR LAB

Appellant

Vs

C.E.E. RAIPUR

Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/01 2009 CU[DB]** dated 19.12.08

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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKARAPARA, RAIPUR
492001

2. Adv. / Consult
MR.K.K ANAND

A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Service Tax Appeal No. 104 of 2007

[Arising out of the Order-in-Appeal No. Commissioner/RPR/ST/ 90/2006 dated 27/11/2006 passed by The Commissioner, Customs & Central Excise, Raipur.]

For Approval and signature :
Hon'ble Mr. P.K. Das, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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 would 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?	:
4.	Whether order is to be circulated to the Department Authorities?	: NA

M/s Agarwal Color Lab — Appellant

Versus

CCE, Raipur — Respondent

Appearance

Shri Hemant Bajaj, Advocate – for the appellant.

Shri S.L. Kumar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri P.K. Das, Member (Judicial)**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 19/12/2008.

Final Order No. 57/1/09 Dated : ____________

Per. P.K. Das :-

The appellant filed this appeal against the order of the Commissioner of Central Excise vide order No. Commissioner/RPR/ST/90/2006 dated 27th November 2006, whereby order dated 31st December 2004 passed by the Assistant Commissioner of Central Excise was revised and penalty was enhanced from Rs. 7,000.00 to @ Rs. 100.00 per day till the payment of tax under Section 76 of Finance Act, 1994.

2. Heard both the sides and perused the records.

3. The learned advocate submits that the appellants are providing photography service. The issue relates as to whether the cost of photographic paper and chemicals would be included in the taxable value of photographic service. He further submits that the Assistant Commissioner of Central Excise vide order dated 31st December 2004 confirmed the demand of tax and imposed penalty of Rs. 7,000.00 under Section 76 of the Act. He also

submits that they have filed appeal before the Commissioner (Appeals) against the order of the Assistant Commissioner of Central Excise, which is still pending. In the meantime, Commissioner of Central Excise revised the Original order and enhanced the penalty. In this context, he submits that the Tribunal in the case of Deluxe Colour Lab Pvt. Ltd. vs. CCE, Jaipur vide final order No. ST/285-288 of 2008 dated 22nd October 2008 set aside the penalty on the identical situation. It is seen that the Tribunal in the case of M/s Jain Brothers and others vs. CCE, Bhopal vide final order No. ST/401-402 of 2008 dated 25th November 2008 following the decision of the Deluxe Colour Lab Pvt. Ltd. (Supra) set aside the imposition of penalty.

3. In view of that the impugned order of Commissioner to revise the order of adjudicating authority by enhancing the amount of penalty under Section 76 of Finance Act, 1994 is set aside. The appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK