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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/191 /2007 - CU[DB] Date 12/01/2009

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

To :
C.C.E. RAIPUR •
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR Appellant

Vs

M/S CHATTISGARH IRON & STEEL PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/9 2009 CU[DB]** dated 01.01.09 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
M/S CHATTISGARH IRON & STEEL PVT. LTD.
1-A, LIGHT INDUSTRIAL AREA, BHILAI, DISTRICT- DURG.
2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
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

COURT – III

SERVICE TAX APPEAL NO. 191 OF 2007

[Arising out of Order-in-Appeal No. 02-ST/RPR-II/2007 dated 24.01.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

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?	
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 Departmental authorities?	y-N

CCE, Raipur — Appellant

Vs.

M/s. Chattisgarh Iron & Steel Pvt. Ltd., — Respondent

Appearance:

Shri Vijay Kumar, Departmental Representative, for the Revenue,
Shri L.P. Asthana, Advocate, for the respondent

Coram:

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

Date of Hearing: 1st January, 2009

FINAL ORDER NO. 57/9/09 **dated** ______

Per P.K. Das:

Revenue filed this appeal against the order-in-appeal No. 02-ST/RPR-II/2007 dated 24.9.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur-II.

2. After hearing both the sides and on perusal of the record, we find that the respondent was undertaking activity of fabrication of railway structures & ladders for towers, on the material supplied by M/s. Unique Structures & Towers Ltd., Raipur. Service Tax was demanded under the category of Business Auxiliary Service. The Adjudicating Authority confirmed the demand of tax and imposed penalty. The Commissioner (Appeals) set aside the adjudication order.

3. On perusal of the order of the Commissioner (Appeals), we find that the Commissioner (Appeals) passed the order on the basis of verification report received from the lower authority confirming that the activity undertaken by the respondent amounts to manufacture and the supplier of raw material has paid the duty on final product. The activity is covered under notification No. 214/86-CE dated 25.3.86, declared as job work. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"I have gone through the grounds of appeal, submissions made by the appellants at the time of hearing, the verification report submitted by the Deputy Commissioner, Central Excise, Bhilai and all other evidence on record. The appellants have carried out fabrication of railway structures and ladder for tower for which raw materials were provided to them by M/s. Unique Structures & Tower Ltd., Raipur. The principal has cleared the final products on payment of central excise duty. For such activity the procedure prescribed under notification No. 214/86-CE, dated 25.03.86 was observed. Such activity amounts to manufacture of excisable goods. The 'Business Auxiliary Service', as defined under section 65(19) of the Finance Act, 1994, specifically excludes the activity that amount to manufacture within the meaning of clause (f) of section 2 of the Central Excise Act, 1944, from the ambit of the service tax and thus the activity carried out by the appellants does not attract any service tax. The order of the lower authority is, thus, not sustainable on legal provisions and is, therefore, liable to be set aside."

There is no dispute of the verification report relied upon by the Commissioner (Appeals). In view of that we do not find any reason to interfere with the order of the Commissioner (Appeals). Appeal filed by the Revenue is rejected.

4. In this context, we observe that in a case involving minor amount of about Rs. 36,191/- where the Commissioner (Appeals) has allowed the appeal of the respondent based on the verification of facts even than Revenue filed this appeal. This is definitely improper exercise of power and unnecessary burden to the assessee.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

Dated 1st January, 2009
RK