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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/281-282 /2007 - CU[DB] Date 14/01/2009

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

To :
M/S P.L.COLOUR LAB
3/12,PRATAP PURA, AGRA

M/S P.L.COLOUR LAB Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/13-14/09 **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
   C.C.E. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.R.SANTHANAM
   C-3/210, JANAKPURI, NEW DELHI-58
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)

17. Mr.R.Prasad Pal, Adv
    29/207 Sanjay Place, Agara

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

Service Tax Appeals Nos.281-282 of 2007-Customs Branch

[Arising out of common Order-in-Appeal No.59-CE/APPL/KNP/2007 dated 27.02.2007 passed by the Commissioner of Central Excise & Service Tax (Appeals), Kanpur]

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?	Yes

M/s. P.L. Colour Lab ......Appellants
(Rep. by Shri R. Santhanam, Advocate)

Vs.

CCE/Service Tax ......Respondent
(Rep. by Shri S.L. Kumar, DR)

Coram:

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

Date of Hearing/decision: 1st January, 2009

FINAL ORDER NO. 57/13-14/09 **dated** ________

Per P.K. DAS:

Heard both sides and perused the records.

2. The appellants are registered with the Central Excise Authorities for providing photography services. It has been alleged that they were

paying Service Tax only on processing charges by excluding the cost of materials supplied by them at the time of issue of bills to the customers. It is seen from the order of the Commissioner (Appeals) that the value of printing papers is includible in the assessable value for the purpose of charging Service Tax.

3. Ld. Advocate fairly submits that the issue has already been decided by the Tribunal in the case of M/s. Delux Colour Lab Pvt. Ltd. Vs. CCE, Jaipur & Another reported in 2008-TIOL-1838-CESTAT-DELHI. The relevant portion of the said decision is reproduced below:-

> "12. It would thus appear that the decision in BSNL case lays down the law that works contract (and also catering contract) involves the element of both sale and service contract and that the service and sale elements can be split up. That being so, we do not find any merit in the submission of the Revenue that the decision in BSNL case cannot be treated as an authority on the issue of service tax. If the photography service is a "works contract', it would follow that it involves the element of both sale and service, and the sale portion of the activity or transaction cannot be included in the taxable value of service. There cannot be any doubt, in view of sub-clause (b) of clause (29-A) of Article 366, that deemed sale of the materials takes place in the rendering of photography service and, therefore, the value of the materials cannot be included while computing the value of the service. 'Sale' and

> 'Service' cannot stand in the same box. Sale cannot be treated a service and vice versa."

4. In view of the above decision, the matter is remanded back to the Adjudicating Authority to re-determine the demand of duty in the light of the decision of the Tribunal in the case of Delux Colour Lab. Pvt. Ltd. & Another (supra). Needless to say that the Adjudicating Authority shall give proper opportunity of hearing before decision. The appeals are allowed by way of remand.

Order dictated & pronounced in open court on 1.1.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.