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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/810 /2008 - CU[DB]
ST/S/2496/08

Date 15/01/2009

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

To :
M/S SRT ENTERPRISES.
1ST FLOOR, THAPER BUILDING, MATA RANI
CHOWK, LUDHIANA.

M/S SRT ENTERPRISES. Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/25/09 **CU[DB]** dated 7/1/09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

alongwith stay order no ST/23/09

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**
1. Respondent
   C.C.E. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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

## <u>COURT – III</u>

## <u>STAY APPLICATION NO. 2496 OF 2008 IN & SERVICE TAX APPEAL NO. 810 OF 2008-ST</u>

[Arising out of Order-in-Appeal No. 371/CE/Ldh/2008 dated 19.11.08 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

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? | |
| 3. | Whether their Lordships wish to see the fair copy of the order? | |
| 4. | Whether order is to be circulated to the Departmental authorities? | |

M/s. SRT Enterprises — Appellant

Vs.

CCE, Ludhiana — Respondent

**Appearance:**

Shri Sudhir Malhotra, Advocate for the appellant,
Shri Vijay Kumar, Departmental Representative, for the Revenue,

**Coram:**

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

**Date of Hearing: 7th January, 2009**

**FINAL ORDER NO.** S7/29/09 **dated** ________

Stay Order No S7/23/09

**Per P.K. Das:**

As the issue involved in this case is in narrow compass, and therefore, after granting stay, the appeal is taken up for hearing.

2. The dispute in this case is, as to whether services of the appellant for sale of recharge coupon; cash cards, SIM etc. of M/s. SPICE Communication Pvt. Ltd. during the period October, 2001 to March, 2006 would come within the definition of "Clearing & Forwarding Agents" services.

3.Learned Advocate on behalf of the appellant submits that they were engaged in sale of pre-paid and post-paid and corporate new connections. There is a demand of service tax of Rs. 29,39,949/- and penalty under the category of "C & F Agents". The Commissioner (Appeals) directed the applicant to make pre-deposit of Rs. 10 lakhs towards service tax and Rs. 15 lakhs towards penalty. The Commissioner (Appeals) rejected the appeal for non-compliance of stay order.

4. The learned D.R. submits that it is revealed from the argument that the activities of the appellant are more akin to C & F agents and cannot be considered as mere commission agent of M/s. SPICE Communication Pvt. Ltd. The appellant failed to make out a prima facie case.

5. After hearing both sides and on perusal of the record, we find that the main contention of the learned Advocate is that the applicant was

engaged in sale of pre-paid and post-paid new connections which cannot come within the purview of "C & F Agent". In support of his claim, he drew attention of the Bench to the agreement and the reply to the show cause notice and also to the letter dated 17.8.2005 of M/s. SPICE Communication. It appears that the applicant was appointed as distributor of M/s. SPICE Communication for sale of pre-paid & post-paid connections and re-charge coupons. The agreement also indicates the engagement of the applicant as distributor. Learned Advocate submits that they have already deposited a sum of Rs. 9,97,221/- against the demand of tax which has been appropriated by the Adjudicating authority.

6. Prima facie, we do not find any material to determine the tax liability under the category of "C & F Agent". We have also noticed that the applicant obtained registration on 30.9.2004 under the category of "Business Auxiliary Services" and have paid an amount of Rs. 9,97,221/-.

7. In view of the above discussion we find that the applicant made out, prima facie case for waiver of pre-deposit of balance amount of tax and penalty. However, as the Commissioner (Appeals) has not decided the matter on merit, we set aside the impugned order and remand ~~the~~ back the matter to the Commissioner (Appeals) to decide afresh on merit without insisting for pre-deposit of any amount. Stay application is allowed. Appeal is disposed of by way of remand. We make it clear that

our prima facie observation would not influence the Commissioner (Appeals) to decide the case on merit.

(Dictated & pronounced in the Open Court.)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK