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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**

Date 23/01/2009

Appeal No. ST/34 /2007 - CU[DB]

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

To :
M/S SBEC SUGAR LTD
VILLAGE- LOYAN MALAKPUR, TEHSIL-
BAGHPAT(UP)
Appellant
M/S SBEC SUGAR LTD
Vs
Respondent

C.C.E.MEERUT I

I am directed to transmit herewith a certified copy of **Final order No.** ST/44/09 CU[DB] dated 02.01.09 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.MEERUT I
   MANGAL PANDEY NAGAR, MEERUT.
2. Adv. / Consult
   MR.P.K.SAHU
   A-345(F F) DEFENCE COLONY,N.DELHI
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), Thyagarava 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-1
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

**Service Tax Appeal No. 34 of 2007**

[Arising out of Order-in-Appeal No. 273-CE/MRT-I /2006 dated 7.12.2006 passed by Commissioner (Appeals), Customs & Central Excise, Meerut I]

For approval and signature:

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

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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? M
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : yM

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M/s. SBEC Sugar Ltd. Appellant

Vs.

Commissioner of Central Excise Meerut I Respondent

**Appearance**:

Mr. Prashant Shukla, Advocate for the Appellants
Mr. S.K. Panda, Jt. CDR for the Respondent

<u>CORAM</u>:

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

Date of Hearing /Decision: 2.1.2009

Final **ORDER NO. 57/44/09**

**Per P.K.Das** (for the Bench):

The relevant facts of the case, in brief, are that the appellant is engaged in the manufacture of cane sugar and molasses classified under Chapter 17 of the Central Excise Tariff Act, 1985. It has been alleged in the show cause notice dated 19.5.2004 that the appellant received commissioner from M/s. Chandigarh Distilleries and Bottlers Ltd. and M/s. India Glycols Ltd. for coordination of orders, which would come under the category of 'clearing and forwarding services". Service Tax was demanded under the category of "clearing and forwarding agent" for the period 1.10.99 to 31.3.03. Adjudicating authority confirmed the demand of tax and imposed penalties, which is upheld by the Commissioner (Appeals).

2. The learned advocate on behalf of the appellant submits that it is revealed from the show cause notice that the appellants had earned commission from M/s. Chandigarh Distilleries and Bottlers Ltd. and M/s. India Glycols Ltd. in coordination of their sales tax towards sale proceed and procurement of orders and goods which cannot be clearing and forwarding service. He submits that adjudicating authority observed that prior to 1.6.03, the services rendered by the appellant would come under the category of C&F agent and subsequently they would have come under more specific category under Business Auxiliary service. He further submits

that Commissioner (Appeals) passed the order on different footings without examining the agreement properly. He submits that adjudicating authority relied upon the decision of the Tribunal in the case of Prabhat Zarda Factory (India) Ltd. vs. Commissioner, [2002 (145) ELT 222 (Tri)] which was over-ruled by the Larger Bench of the Tribunal in the case of Larsen & Toubro vs. CCE, Chennai [2006 (3) STR 321 (Tri-LB)]. He also submits that the Commissioner (Appeals) proceeded on the basis of another decision of the Tribunal in the case of Coal Handlers Pvt. Limited vs. CCE [2004 (171) ELT 191 (Tri) which has been followed by the decision of Prabhat Zarda Factory Ltd (supra). He also submits that both the authorities below have not looked into relevant portion of the agreement indicating the scope of work.

3. Learned Jt.CDR reiterates the findings of the Commissioner (Appeals). He submits that adjudicating authority passed the order on the basis of agreement. He also submits that the Commissioner (Appeals) have examined the agreement widely and confirmed the demand of tax. He relied upon the decision of the Tribunal in the Naresh Kumar & Co. Pvt. Ltd. vs. CST, Kolkata [2008 (11) STR 578 (Tri-Kol)].

4. After hearing both the sides and on perusal of the records, we find that show cause notice was issued alleging that the appellant collected the commission from their clients in coordination of the sales and sale proceeds etc. and procurement of orders and goods. Both the authorities below passed the order on the basis of agreement which is supplied by

the appellant. We also notice that Commissioner (Appeals) after examining the agreement held that appellant rendered the service under the category of C&F agent. The grievances of the appellant that Commissioner (Appeals) had not examined agreement wholly. We further notice that the adjudicating authority had taken a contrary stand inasmuch as he treated the services of the appellant prior to 1.7.03 under the category of C & F agent and subsequently under Business Auxiliary service which is not proper and legal. In view of that we find that the matter is required to be examined by the adjudicating authority after going through the agreement and the case laws placed by the parties. Impugned orders are set aside and the matter is remanded to the adjudicating authority to decide afresh after considering the agreement and the case laws placed by the parties. The appeal is allowed by way of remand.

(Dictated & Pronounced in the open Court)

( M. Veeraiyan )
Member(Technical)

( P.K.Das )
Member(Judicial)

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