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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/306 /2007 - CU[DB] Date 30/01/2009

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

To :
M/S MONI COLOURS PVT. LTD.
4, HAMIDIA ROAD, BHOPAL

M/S MONI COLOURS PVT. LTD. Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/58/2009 **CU[DB]** dated 13.01.09 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult : Sh. Satyajit Chatterjee, CA
   Ist Floor Shikahr Tower, 6 No Stop
   Shivjee Nagar, Bhopal
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)

(1)

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

Service Tax Appeal No. 306 of 2007

[Arising out of Order-in-Appeal No. 106-ST/ BPL/2006 dated 22.2. 2007 passed by Commissioner (Appeals) Central Excise, Bhopal]

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?
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. Moni Colours Pvt. Ltd. — Appellant

Vs.

Commissioner of Central Excise Bhopal — Respondent

Appearance:

Mr. Satyajit Chatterjee, Chartered Accountant for the Appellant
Mr. Vijay Kumar, SDR for the Respondent

CORAM:

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

Date of Hearing /Decision: 13.1.2009

Final **ORDER NO. ST/58/09**

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

Heard both sides and perused the records.

2. Learned Chartered Accountant submits that the appellants were engaged in providing "Photography Services". The issue relates to as to whether the benefit of Notification No. 12/03-ST dated 20.6.03 in so far as the value of goods and materials were to be included in the value of taxable service. It has been held that cost of these materials consumed would be included in the taxable value. We find that the issue has been decided by the Tribunal in the case of Delux Colour Lab (P) Ltd. vs. CCE, Jaipur [2008 (17) STT 481 (New Delhi-CESTAT). The relevant portion of the said decision is reproduced of the said decision is reproduced below:

> "12. It would thus appear that the decision in BSNL's case (supra) 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's case (supra) 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 (29A) 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 as service and vice versa."

"16. The pronouncement of law by the Supreme Court is binding on all Courts and authorities under Article 141 of the Constitution of India. Any decision of the High Court or the Tribunal or even the Supreme Court of lesser Bench strength has to be understood, read down (if necessary) and applied in the light of the binding precedents of the Supreme Court. As observe above, the dispute involved in these appeals is covered by the decision in BSNL's case (supra) and, therefore, it is not necessary to make comments on the various decisions cited by the parties, referred to above. We are of the view that in the light of the law laid down by the Supreme Court in BSNL's case (supra) the matter has to be reconsidered de novo by the authorities below.

17. One issue which we may deal with relates to limitation. According to the appellant, the impugned demands have been confirmed invoking the extended period of limitation, but as the appellants did not commit any fraudulent act nor suppressed any information from the Department muchless with intention to evade the service tax, the non-payment, if any, by reason of non-inclusion of the value of the sale portion of the contract, that is, the non-disclosure of the gross total amount including the value of the materials, was on account of bona fide belief that service tax liability relates to the service part of the contract which has already been discharged by the appellants as per Notification No. 12/2003-ST. The case of the revenue, on the point of limitation, on the other hand, is that the non-inclusion of the value of photography materials in the value of the taxable service was deliberate with intent to evade service tax. In view of our conclusion on the main dispute as to inclusion of the value of materials in the total value of taxable service in favour of the appellants, it is clear that non-inclusion of value of materials being in accordance with law, the extended period of limitation cannot be

invoked, and the question of limitation too has to be reconsidered while considering the appellants' case.

18. In the result, the orders impugned in these appeals are set aside and the matters are sent back to the original authority for de novo consideration in accordance with law. The appeals are accordingly, allowed."

3. In view of the above decision of the Tribunal, we hold that the value of materials cannot be included while computing value of the photography service. We also notice that there is no suppression of fact with intent to evade payment of tax and therefore, extended period of limitation cannot be invoked. So, the demand of tax for extended period of limitation and penalties are set aside. The matter is remanded to the adjudicating authority to re-determine the tax liability after examining the value of taxable service in the light of above decision. The appeal is disposed of in the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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