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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/38 /2009 - CU[DB]
ST/S/131/09

Date 16/03/2009

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

To :
M/S IFB INDUSTRIES LTD.
SCO-146-147, 2ND FLOOR, SECTOR 34-A,
CHANDIGARH 160022
M/S IFB INDUSTRIES LTD.

Appellant
Vs
Respondent

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of **Final order No. ST/99 2009 CU[DB]** dated 02.03.09 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/80/09

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult : Sh. Pulak kumar Saha, FCA
171 Lake Town Block – B Kolkata - 89

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

ST/STAY NO. 131/2009-CUS.BR. IN & SERVICE TAX APPEAL NO. 38 OF 2009

[Arising out of Order-in-Appeal No. 590/CE/CHD/2008 dated 27.11.2008 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?	NO
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?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. IFB Industries Limited Appellant

Vs.

CCE, Chandigarh Respondent

Appearance:

Shri Pulak Kumar Saha, C.A., for the appellant;
Shri Fateh Singh, D.R., for the Revenue,

Coram:

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

Date of hearing/decision: 2^{nd} March, 2009

FINAL ORDER NO. ST/99/09 **dated** __________

Stay Order No ST/80/09

Per M. Veeraiyan:

Heard both sides on the stay petition for a while and proceed to dispose of appeal itself after dispensing with pre-deposit of service tax, interest and penalty as the issue is very short.

2. The appellant is engaged in the manufacture of Washing Machine and, they are rendering services of maintenance contract and they have been paying service tax on such services. The dispute is that, during the period 10^{th} September, 2004 to July, 2005, in respect of Annual Maintenance Contract entered prior to the said period and the contract continuing the department has confirmed the demand of service tax on the enhanced rate of tax i.e. 10% basic as against 8% which was ruling rate at the time of contract.

3. Learned Chartered Accountant submits that in a similar situation the Board vide Circular 56/5/2003.S.T. dated 25.04.2003 has clarified that the enhancement of rate of service tax shall not apply to the billing made prior to the date of passing of the Finance Bill. He submits that as the Annual Maintenance Contracts were entered into prior to 10.9.04 and the amounts have already been realized and the applicable service tax has been paid as per ruling rate, the question of demand of differential tax does not arise.

4. Learned D.R. reiterates the findings of the original authority.

5. The Commissioner (Appeals) has not decided the issue on merits. The submissions made by the learned Chartered Accountant that the old lower rate shall be applicable and not the higher rate deserve to be considered by the Commissioner (Appeals) on merits. To enable the same, we set aside the order of the Commissioner (Appeals) and remand the matter to him to decide afresh without insisting on any pre-deposit. We clarify that we make no any comments on the merits of the case.

6. Appeal is allowed by way of remand. Stay application is also disposed of.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK