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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/325 & 350/2006 - CU[DB]

Date 16/03/2009

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

To :
M/S SUCHITA MARKETING (P) LTD
17, ABHISHEK TEXTILE MARKET, BHILWARA (RAJ)
M/S SUCHITA MARKETING (P) LTD

Appellant
Vs
THE COMMISSIONER CENTRAL EXCISE, JAIPUR II
Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/102-03 2009 CU[DB]** dated 17.02.09 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
THE COMMISSIONER CENTRAL EXCISE, JAIPUR II
NCRB, STATUE CIRCLE, C SCHEME, JAIPUR
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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

17: m/s Singer Textile (I)
149 Ambaji Textile Tower
Bhilwara (Raj)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Service Tax Appeal No.ST/325 & 350/06/CUST
[Arising out of Order-in-Appeal No.150-151 (HKS) ST/JPR-II/2006 dated 28.02.2006 passed by the Commissioner (Appeals-II), Jaipur-II].

Date of Hearing:17.02.2009

M/s. Suchitra Marketing (P) Ltd. &
M/s. Singer Textiles (India) ...Appellants

Vs.

CCE, Jaipur-II ... Respondent

Present for the Appellant : Ms.Asmita Nayak, Advocate
Present for the Respondent : Shri A.K.Madan, SDR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final ORDER NO. ST/102-103/09 DATED:17.02.2009

PER: D.N.PANDA

Ld. Counsel Ms.Asmita Nayak argues that the appellant was getting goods as a broker from the principal and keeping the same for sometime till buyer is found for selling the goods received from the principal. She submits that this is not a case of clearing & forwarding agency but a business auxiliary service. She relies on para 17 to 21 of the agreement between the parties. According to her, the appellant only furthers business of principal as an agent. Therefore the appellant should succeed when the law was not in force, even to bring business auxiliary services into tax net.

2. Ld. DR submits that the very nature of the agreement at page 65 clearly brings the relation between the principal and agent to discharge obligation of each other as narrated in para 2 of the agreement itself. He submits that para 2 clearly leads to construe the meaning of the agreement.

3. Heard both sides and perused the records. We have gone through the appellate order passed by the ld. Commissioner (Appeals) who has brought out the nature of activities carried out by the appellant. Ld. Appellate Authority has made a finding that the goods are received from the principal by the appellant and those goods are also delivered to serve interest of principal itself. There are several orders passed by the Tribunal beginning from Larson & Tubro case to hold that above activity is clearing and forwarding service. We have also gone through the judgement of this Tribunal in the case of Naresh Kumar & Co. Pvt. Ltd. vs. CST, Kolkata reported in 2008 (11) STR 578 where there was a detailed analysis of C&F Services done. Added to that, Tribunal had also occasion to examine the case of Karam Chand Thappar v/s. Commissioner of Service Tax, Kolkata and noted the characteristics of agreement which is decisive to decide liability. A bare perusal of the relation of the principal and agent read with

the CBEC Circular No.8/43/7/97-TRU dated 11.07.97 brings the very nature of activity of the present appellant to the scope of the law under the category of Clearing & Forwarding Agency. Having considered the legal aspect with the factual background of the case, we are of the belief that the appellant has no case to succeed. We dismiss both the appeals.

[Pronounced in the open Court during the course of hearing].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita