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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/457 /2006 - CU[DB] Date 26/03/2009

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

To :
M/S PREM STEELS PVT LTD
BEGRAJPUR,MEERUT ROAD,MUZAFFARNAGAR(UP)

M/S PREM STEELS PVT LTD Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/114/2009 CU[DB]** dated 04.03.09 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.AALOK ARORA, ADVOCATE
   82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)
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

SERVICE TAX APPEAL NO. 457 OF 2006

[Arising out of Revision Order No. 26/Comm./MRT-I/06 dated 25.05.2006 passed by the Commissioner, Central Excise, Meerut-I, Meerut]

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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Prem Steels (P) Ltd., Appellant

Vs.

CCE, Meerut-I Respondent

Appearance:

Shri Alok Arora, Advocate, for the appellant;
Shri Sunil Kumar, 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: 4th March, 2009

FINAL ORDER NO. S?/114/09 **dated** ________

Per P.K. Das:

The appellant filed this appeal against the Revision Order No. 26/Comm./MRT-I/06 dated 25.5.2006 passed by the Commissioner, Central Excise, Meerut-I.

2. The relevant facts of the case, in brief, are that the appellant is engaged in the manufacture of M.S. Ingots at their factory. During the visit of the appellant's factory, the officers seized some documents from their factory premises. It is revealed from the documents that the appellant received an amount of Rs. 30,82,365/- as income from commission during the year 2000-01 paid by M/s. Ethnic Creations Pvt. Ltd. for introducing them to M/s. Polo Leasing and Finance Pvt. Ltd. in connection with sale of property. During investigation the appellant by its letter dated 18.12.2002, informed the Central Excise authorities that payment was made for introducing the prospective buyer of plot and arranging the sale thereof. Show cause notice dated 9.3.2004 was issued proposing demand of tax of Rs. 1,54,118-00 under the category of "Real Estate Agent". The Asst. Commissioner of Central Excise dropped the proceedings. The Commissioner of Central Excise by Revision Order dated 25th May, 2006 confirmed the demand of tax and imposed penalties.

3. The learned Advocate submits that the appellant had received the amount for introducing the prospective buyer, which can not come within the definition of "Real Estate Agent". He, further, submits that the Asst. Commissioner of Central Excise after examining the documents dropped the proceedings. He also submits that the Commissioner during the revision proceeding erroneously proceeded on the basis of the appellants letter dated 18.12.2002 ignoring the documents. He further submits that in the facts and circumstances of the case imposition of penalty is excessive and unwarranted.

4. The learned D.R. on behalf of the Revenue reiterates the findings of the Commissioner. He submits that the appellant in their letter dated 18.12.2002 clarified that the payments were made for arrangement of sale. He also submits that the appellant was engaged in rendering the service in relation to the sale of property and, therefore they are "Real Estate Agent".

5. After hearing both the sides, we find that by letter dated 18.12.2002 the appellant clarified that the commission was received by them for introducing the prospective buyers of plot and arranging sale thereof. Definition of "Real Estate Agent" includes for rendering any service in relation to sale, purchase, leasing, renting of real estate. The Asst. Commissioner of Central Excise held that Ethnic Creations Pvt. Ltd. are the actual service provider. We find that the Asst. Commissioner while passing the order have failed to consider the appellant's letter dated

18.12.2002 whereby they clarified that the amount was received by them for rendering service in relation to sale of plot. In our view, the activities of arranging sale thereof would cover the definition of "Real Estate Agent". So, demand of tax and interest are justified.

6. We agree with the submission of the learned Advocate that the amount of penalty is excessive. We have also noticed that the original authority dropped the proceedings. In view of that imposition of penalty of Rs. 500/- under Section 75A, Rs. 1000/- under Section 77 of the Finance Act, 1994 is upheld. Penalty under Section 76 of the Act is reduced to Rs. 20,000/-.

6. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK