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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/564 /2006 - CU[DB] Date 27/04/2009

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

To :
C.C.E.KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR Appellant

Vs

M/S ASHOK ENTERPRISES. Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/130 2009 CU[DB]** dated 23.04.09 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
   M/S ASHOK ENTERPRISES.
   2A/157, AZAD NAGAR, KANPAUR.
2. Adv. / Consult
   MR.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Service Tax Appeal No. 564 of 2006-Cust. Br. with CO/67/2007

(Arising out of Order-in-Appeal No. 450-CE/APPL/KNP/2006 dated 12.9.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

CCE, Kanpur — Appellant

Vs.

M/s Ashok Enterprises — Respondent

Appeared for Appellant : Shri L.B. Yadav, SDR

Appeared for Respondent: Shri R. Santhanam. Advocate

Date of Hearing: 23.4.2009

CORAM: HON'BLE DR. C. SATAPATHY, TECHNICAL MEMBER
HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 57/130/09 dated............

Per Dr. C. Satapathy :

Heard both sides.

2. Shri L.B. Yadav, ld. SDR appearing for the department states that at the material time the expression franchise was defined to mean an agreement by which :-

(i) franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name, logo or any such symbol, as the case may be, is involved ;

(ii) the franchisor provides concepts of business operation to franchisee, including know-how, method of operation, managerial expertise, marketing technique or training and standards of quality control except passing on the ownership of all know how to, franchisee;

(iii) the franchisee is required to pay to the franchisor directly or indirectly, a fee and

(iv) the franchisee is under an obligation not to engage in selling or providing similar goods or service or process, identified with any other person.

He states that the department agrees that all the four elements listed above have to be satisfied to bring the assessee under the Service Tax for franchisee service. He states that in the instant case the assessees have met all these four criteria as brought out in the show-cause notice and also in the original order. However, the lower appellate authority has held erroneously that the Respondents have not satisfied Sr. No. (ii) [redacted] above without examining the facts of the case.

3. Heard Shri R. Santhanam, ld. Advocate appearing for the Respondent also states that all the four elements under definition of franchisee are fully satisfied and he refers to the argument made on behalf of the Respondent recorded by the lower Appellate Authority in his order as to how the Respondents have met the criteria at Sr. No. (ii). He also states that the Respondents are providing the service of intellectual property right

which came under the Service Tax with effect from 10th September, 2004.

4. After hearing both the sides, we are of the view that while for the later period whether the assessees' services fall under one category [redacted] or the other has to be considered with reference to rules for classification of services, for the earlier period it has to be examined whether they are falling under the category of franchisee services as defined at the material time under the law. We find that while the lower appellate authority has referred to the arguments advanced on behalf of the Respondents he has given no finding as to whether the Respondent have satisfied criterion No. (ii) under the definition of franchisee. In the order portion, he has merely recorded the opinion that respondents have [redacted] satisfied this condition without examining the facts of the case. As such, with the consent of both sides, we set aside the impugned order and remand the matter to the lower appellate authority to examine the case with reference to the arguments advanced from both sides and pass a reasoned and speaking order after allowing reasonable opportunity of hearing to both the sides. Department's appeal is allowed by way of remand. Cross-objection filed by the Respondent also stands disposed off.

(Dictated & pronounced in open Court)

(DR. C. SATAPATHY)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RM