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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**

Date 27/04/2009

Appeal No. ST/572 /2007 - CU[DB]

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

Appellant
Vs
Respondent

C.C.E. JAIPUR I

M/S ADARSH MARKETING

I am directed to transmit herewith a certified copy of **Final order No. ST/131** **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 ADARSH MARKETING
   314, ADARSH NAGAR, JAIPUR(RAJ)
2. Adv. / Consult : Sh. Alok Kothari, CA
   A-92 Manish Marg, Nemi Nagar
   Gandhi Path, Vaishali Nagar Jaipur - 21

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. 572 of 2007-Cust. Br.**

(Arising out of Order-in-Appeal No. 115(GRM)ST/JPR-I/2007 dated 13.6.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

CCE, Jaipur — Appellant

Vs.

M/s Adarsh Marketing — Respondent

Appeared for Appellant : Shri Sumit Kumar, DR

Appeared for Respondent: Shri Alok Kothari, C.A.

**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. 57/13/09 dated............

Per Dr. C. Satapathy :

Heard both sides.

2. In this case, the original authority has decided the matter against the Respondents holding them liable to pay the Service Tax on the gross value of the services provided and has disallowed the deduction claimed by the Respondent as they did not substantiate their claim by production of the relevant records. Subsequently, the lower Appellate Authority has allowed the deduction claimed by the Respondent. Shri Alok Kothari, Ld. CA appearing for the

Respondent fairly states that the documents were not produced before the original authority for various reasons beyond the control of the Respondents and subsequently these were produced before the Commissioner (Appeals). However, he confirm that Departmental Representative was not heard by the lower Appellate Authority and we find that the results of the examination of the averments are also not contained in the order of lower appellate authority.

3. Shri Sumit Kumar, Ld. DR appearing for the Department states that the order of the lower Appellate Authority is faulted which is based on stay orders passed by the Tribunal, which cannot be taken to have precedent ial value. Moreover, he relies on the order of Tribunal in the case of **Naresh Kumar & Co. Pvt. Ltd. Vs. Commissioner of Service Tax, Kolkata** reported in 2008 (11) STR 578 to support the claim that the tax on the gross value of the services has to be levied without allowing the deduction.

4. After hearing both sides and perusal of the record including the cited decision, we find that the respondents have not produced the documents in support claim for deduction before the original authority. Accordingly, we are of the view that in such a circumstance where the documents were not produced before the original authority, the lower appellate authority should have remanded the matter afresh for examination by the

original authority, which does not appear to be the case nor he has invited the departmental representative in the present case during hearing taken up by him. Hence the impugned order is set aside and the matter is remanded to the original authority for a fresh decision. The Respondents will be at liberty to produce the documents in support of their claim before the original authority and they shall be given an reasonable opportunity of hearing [redacted]. The appeal is allowed by way of remand.

(Dictated & pronounced in open Court)

(DR. C. SATAPATHY)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RM