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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/392 -393/2007 - CU[DB]   Date 13/05/2009

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

To :
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI   Appellant
Vs
M/S USHA HYDRO DYNAMICS LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/160-161 2009 CU[DB]** dated 27.04.09 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 USHA HYDRO DYNAMICS LTD.
   14/7, MATHURA ROAD, FARIDABAD
2. Adv. / Consult
   MR.K. K ANAND, ADV
   A-5 BASEMENT LAJPAT NAGAR – III NEW DELHI 110024
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. 392-393 of 2007-Cust. Br.

(Arising out of Order-in-Appeal No. 16-17-ST/DLH/2007 dated 9.4.2007 passed by the Commissioner (Appeals), Central Excise, Faridabad)

CST, Delhi — Appellant

Vs.

M/s Usha Hydro Dynamics Ltd. — Respondent

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

Appeared for Respondent: Shri K.K. Anand, Advocate

Date of Hearing: 27.4.2009

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

Final Order No. ST/160-161/09 dated............

Per D.N. Panda :

These two Appeals were filed by Revenue against the same Respondent. In both the Appeals, Revenue's grievance is that they were aggrieved by order passed by ld. Commissioner who set aside the order passed by the ld. Adjudicating Authority denying refund of Rs. 7,78,498/- and Rs.8,59,882/- respectively. In both the cases, ld. Commissioner (Appeals) held that the Respondent had borne the burden of Service Tax paid under protest and had not realised the same from its clients, for which they need not face the test of unjust enrichment.

2. Ld. DR vehemently objects the order passed by ld. Commissioner (Appeals) on the ground that if at all taxes were refundable that had to meet the test of unjust enrichment. Respondent have provided repair and maintenance service through high pressure water jet pumps without merely cleaning the plant and machinery. Therefore the Adjudicating Authority rightly denied refund classifying the service under the category of repair and maintenance. He further submits that in terms of Section 65 (64) of the Finance Act 1994, the term repair and maintenance has been defined. Such service was provided under a maintenance contract, for which the Respondents have to suffer tax.

3. Ld. Counsel Shri K.K. Anand appearing for the Respondent submits that the ld. Appellate Authority on examination of the facts and relevant evidence rightly came to the conclusion that nature of service provided by the Respondent was to clean plant and equipment with the help of high pressure water jet pumps and such service does not came under the clause of repair and maintenance under Section 65(64) of the Finance Act 1944. When the cleaning activity came to the ambit of law for taxing such service with effect from 16.6.2005, the Respondents were rightly exonerated from the liability by the learned Commissioner for the impugned period. Once the Appellant was not liable to pay tax, ld. Commissioner (Appeals) has rightly held that the money paid under protest was refundable.

4. Heard both the sides and perused the record.

5. We have examined the order of adjudication. The order of Adjudication has flown from the Show Cause Notice bringing out the charge that Service Tax was paid under the category of maintenance and repair during the period under refund. That Authority examined the matter in length but without considering the plea of the Appellant that the cleaning activity was specifically brought to the ambit of law with effect from 16.6.2005, decided the matter against the Appellant and also held that the refund that arises to the Appellant has to meet the test of unjust enrichment. We appreciate that the cleaning activity has been brought to the ambit of tax from 16.6.05 specifically. Appreciating that there is no intendment about tax nor there is equity about tax, we remand the matter to the ld. Adjudicating Authority who shall examine the issue of unjust enrichment granting fair opportunity of hearing to the Appellant and pass a reasoned and speaking order.

(Pronounced in open Court)

(DR. C. SATAPATHY)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RM