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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/303-305 /2007 - CU[DB]

Date 27/05/2009

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

To :
SHREE KRISHNA BUILDERS,
PAHADI CHOWK, H.NO. 9/428,GUDIYARI, RAIPUR
(C.G0

Appellant

SHREE KRISHNA BUILDERS,

Vs

Respondent

C.C.E. RAIPUR

I am directed to transmit herewith a certified copy of **Final order No.** ST/177-179 2009 CU[DB] dated 31.03.09 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. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

in Appeal No.ST/303-305/2007-Cusotms Branch

[Arising out of Order-in-Appeal No.24(ST)/RPR-I/2007 dated 29.03.2007, Order-in-Appeal No.26(ST)/RPR-I/2007 dated 29.03.2007 and Order-in-Appeal No.25(ST)/RPR-I/2007 dated 29.03.2007 passed by the Commissioner of Central Excise (Appeals), Raipur]

Date of Hearing/ Decision:31.03.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should 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

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M/s. Krishna Builders ....Appellants

[Rep. by None]

Vs.

CCE, Raipur ...Respondent

[Rep. by Shri L.B. Yadav, SDR]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. ST/177-179/09 /Dated:31.03.2009

<u>Per P.K.Das:</u>

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. None appears on behalf of the appellant. The appellant vide letter dated 9.2.2009 requested to decide the appeal on merits in their absence.

3. Heard the ld. DR on behalf of the Revenue and perused the records. The appellants are engaged in constructing residential houses/flats on his own by engaging constructors. In their written submissions, it is contended that they have applied for registration under protest on 2.6.2006. They have paid the Service Tax on 14.06.2006 at the instance of the officers for the period 1.4.2005 to 30.06.2006. The appellant filed refund claim on the ground that no tax is liable to be paid on them. They relied upon Board Circular No.108/02/2009-St dated 29.01.2009.

4. On perusal of the impugned order, we find that the refund was rejected on the ground of unjust enrichment as well as on merits. The Commissioner (Appeals) proceeded on the basis of Board Circular F.No.332/35/2006-DRU dated 1.8.2006. The appellants in their written submissions stated that by Board's Circular dated 29.01.2009, it is clarified that no tax is leviable on them. We have noticed that the refund was also rejected on the ground of unjust enrichment as the appellant failed to produce any evidence that the incidence of duty has not been passed on to any other person. In the written submissions, it is contended by the appellant that the amount was paid by them and it was not recovered from the customers. In support of their contention, they placed

audited financial statement for financial year 2006-2007, where it was indicated that the amount was not recovered from any customer.

5. In view of the above discussion, we find that the matter is required to be examined on merit as well as on unjust enrichment on the basis of Board's Circular and the evidences placed by the appellant. Accordingly, we set aside the impugned orders. The matter is remanded back to the Original Authority to decide afresh after considering the Board's Circular and submission of the appellant in accordance with law. The appellants ~~were~~ are also directed to produce the evidence in ~~respect~~ support of their contention in respect of the unjust enrichment. Needless to say that the Original Authority shall give proper opportunity of hearing before decision. All the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 31.03.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.