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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/353 /2007 - CU[DB] Date 23/06/2009

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

To :
M/S DIMENSIONAL STONES
B-76, MIA, ALWAR, RAJASTHAN

M/S DIMENSIONAL STONES Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/202 2009 CU[DB]** dated 25.05.09 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

Service Tax Appeal No. 353 of 2007

DATE OF HEARING : 25th May 09.

M/s Dimensional Stone — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Shri R. Santhanam, Advocate – for the appellant.

Shri L.B. Yadav, Authorized Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No. ST/202/09 Dated : ____________

ORDER

Per. D.N. Panda :-

Appellate Authority had the issue before him that whether appellant is liable to pay service tax on the commission paid to the person/party who has no business establishment in India and providing taxable services to them (Indian company) being a service receiver. Learned counsel Shri Santhanam submits that soon after the difficulties in Laghoo Udyog case was pointed out by Hon'ble Supreme Court, the Government brought out an amendment inserting Section 66A into the Finance Act, 1994 to confer power on the Central Government to make rule for a declaration of service recipient to be liable to pay service tax. Such an amendment conferring power on the Central Government was enacted in 2006 to come into force w.e.f. 18/4/2006. The case of the appellant is from January 2005 to March 2006. Therefore, he submits that recovery of the service tax from the service recipient prior to 18/04/06 is not permissible in view of judgment in **Indian National Shipowners Association vs. Union of India** reported in **2009 (13) S.T.R. 235 (Bom.)**. Accordingly, the order passed by authorities below shall not sustain.

2. Learned DR does not agree with the submission of the learned counsel relying on the decision of the Hon'ble High Court of Rajasthan in the case of **Union of India vs. Aditya Cement** reported in **2008 (10) S.T.R. 228 (Raj.)**. Therefore, the Authorities below were correct and passed appropriate order accordingly.

3. Heard both the sides and perused the records.

3.1 We are unable to agree with Revenue for the reason that when the recovery provision for recovery of tax demand from the service recipient was not there in the statute book and when such difficulty was experienced, amendment to law was made on 18/04/06, Revenue has no case to bring the appellant to the fold of the law. Accordingly, we allow the appeal of the appellant.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK