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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/581 /2007-583 /2007 - CU[DB] Date 30/06/2009

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S AMERICAN COLOR LAB Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/205-207 2009 CU[DB] dated 25.06.09

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 AMERICAN COLOR LAB
   SIKH MOHALLA, INDORE (M.P)
2. Adv. / Consult : SK PAHWA, ADV
   D-75 AMAR COLONY LAJPAT NAGAR – IV
   NEW DELHI
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
18 M/S KRISHNA COLOR LAB
   10/1, Y.N.ROAD, INDORE (M.P)
19 M/S SHEETAL PHOTOFAST COLOR LAB
   22/2,BAIRATHI COLONY, INDORE (M.P)

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 581-583 of 2007

[Arising out of Order-in-Appeal No. IND-I/137 to 141/2007 dated 31.7.07 passed by the Commissioner (Appeals) Customs & Central Excise, Indore.]

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 the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	NO
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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Service Tax Appeal No. 581 of 2007

Commissioner of Central Excise Indore — Appellant

Vs.

M/s. American Color Lab — Respondent

Service Tax Appeal No. 582 of 2007

Commissioner of Central Excise Indore — Appellant

Vs.

M/s. Sheetal Photofast Color Lab — Respondent

Service Tax Appeal No. 583 of 2007

Commissioner of Central Excise Indore — Appellant

Vs.

M/s. Krishna Color Lab — Respondent

Appearance:

Shri Sunil Kumar, DR for the Appellant
Shri S.K. Pahwa, Advocate for the Respondent

CORAM:

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

Date of Hearing/decision : 25.6.2009

Final **ORDER NO. 57/205 – 207/08**

Per M. Veeraiyan (for the Bench):

These three departmental appeals are arising out of common order-in-appeal dated 31.7.07 passed by the Commissioner (Appeals) involving different respondents.

2. The issue involved is the valuation of photography service for the purpose of levy of service tax. The original authority held that the value of materials namely, photography chemicals and papers which have been used in rendering the photography service should be included in the value of taxable service and demanded tax and imposed penalties. Commissioner (Appeals) held that "in the services relating to photography, if certain goods and materials are consumed, then the value of those goods and materials cannot be included in the value of services for levy of service tax" and accordingly, allowed the appeals of the parties.

3. Learned DR submits that there is no sale of photography paper and the chemicals to the customers but the same were consumed by the respondents while developing the prints. He also particularly submits that the chemicals which have been used by the respondents in processing the prints are not marketable and that at the time of transfer of materials for the intended purpose, they do not exist as chemicals and they are not marketable at all. He relies on the decision of the Tribunal in the Central Excise case relating to Prasad Film Laboratories reported in 2005 (189) ELT 63 (Tri-Bang) and in the case of Associated Film Indus. Pvt. Ltd. vs. CCE, Mumbai V [2009 (235) ELT 498 (Tri-Mum)].

4. Learned Advocate for the respondents submits that in the case of Shilpa Colour Lab vs. CCE, Calicut [2007 (5) STR 423 (Tri- Bang)] Tribunal has held that the value of unexposed photography film, unrecorded magnetic tape or other storage device cannot be included in the value of taxable service and said decision has been upheld by the Hon'ble Supreme Court. He also relied on the decision of the Tribunal in the case of Ajanta Colour Labs [2009 (14) STR 468 (Tri-Del)] wherein the value of chemicals which have gone into the developing of prints has been excluded. He also relies on the decision of the Tribunal in the case of Delux Colour Lab Pvt. Ltd. reported in [2009 (13) STR 605 (Tri-Del)].

5. We have carefully considered the submissions of both the sides. We find that the issue in these appeals already stand decided by the Tribunal in the case of Delux Colour Lab Pvt. Ltd. The relevant portion of the order is reproduced below:

"**12.** It would thus appear that the decision in *BSNL* case lays down the law that works contract (and also catering contract) involves the element of both sale and service contract and that the service and sale elements can be split up. That being so, we do not find any merit in the submission of the Revenue that the decision in *BSNL* case cannot be treated as an authority on the issue of service tax. If the photography service is a 'works contract', it would follow that it involves the element of both sale and service, and the sale portion of the activity or transaction cannot be included in the taxable value of service. There cannot be any doubt, in view of sub-clause (b) of clause (29-A) of Article 366, that deemed sale of the materials takes place in the rendering of photography service and, therefore, the value of the materials cannot be included while computing the value of the service. 'Sale' and 'Service' can not stand in the same box. Sale cannot be treated as service and *vice versa*."

6. The above said decision has also been followed in several other cases for example, case of Ajanta Color Labs cited supra and also in the case of Shilpa Colour Lab cited supra. The decision of the Tribunal in the case of Shilpa Colour Lab has been approved by the Hon'ble Supreme Court.

7. In the light of the above, we do not find any merit in the appeals of the Department. The appeals are therefore, rejected.

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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