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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/613 /2009 - CU[DB] Date 30/10/2009
ST/S/2349/09

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

To :
M/S RANE ENTERPRISES
294-A, INDIRA COLONY, MUZAFFARNAGAR.

M/S RANE ENTERPRISES Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/262 2009 CU[DB] dated 14.09.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alongwith Stay Order No ST/340/09

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN
   SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MRP.K.SAHU, ADV
   A-345 (FF) DEFENCE COLONY, 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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/S 2349/09, ST/Appeal No.613/09-Cus(Br)

(Arising out of order in appeal No.48/CE/MRT/1/2009 dated 22.4.09 passed by the Commissioner of Central Excise (Appeals) Meerut)

M/s Rane Enterprises — Appellant

Vs

CCE, Meerut — Respondent

Appeared for the Appellant : Shri P. Shukla, Advocate
Appeared for the Respondent : Shri Fateh Singh, SDR

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 14.9.09

Final Order No. 57/262/09 /2009
Stay Order No. 57/340/09
Per D.N. Panda:

Learned Counsel Shri Shukla submits that this appellant is a after-sales service provider on behalf of the Eureka Forbes. There is a service tax demand of Rs.29,183/- only against this appellant while there was claim of benefit of Notification No.2/2005 dated 1.3.2005. Shri Shukla submits that the appellant operated under an agreement and work order appearing at page 42 to 47 of the appeal folder. This appellant on behalf of Eureka Forbes was rendering repair services only. But the Department has alleged against the appellant that it had provided two categories of services. one is maintenance and repair and other is business auxiliary services. According to Shri Shukla, show cause notice does not mention carrying out of repair activity under an agreement. Rather, the appellant was acting as an agent of Eureka Forbes to provide after sales service as guaranteed by the earlier. Therefore, the appellant being a small service provider is entitled to the benefit of Notification No.6/2005-CE dated 1.3.2005. There is also no speaking order as to how the appellant has been treated to have been provided business auxiliary service. The non-speaking order shall not bring the appellant to service tax net. In view of status of the appellant as a small tax payer providing after sales service on behalf of the Eureka Forbes and nothing being spelt out as to the activity of business auxiliary service alleged to have been provided, the appeal itself may be disposed of waiving pre-deposit.

2. Learned DR supports the order passed by the learned Commissioner (Appeals).

3. We have heard both the sides extensively. Finding that the appellant is a small scale service provider and also acted on behalf of the Eureka Forbes Ltd., the order of adjudication has not brought out the manner how the appellant being after sales provider should be made liable to tax while the terms of agreement appears to be a case of franchise agreement. So also we have considered the plea of the learned Counsel about the non-speaking order in respect of the business auxiliary service. Having been satisfied that the appellant is a small scale service provider and the scope of service is different as that was alleged by show

cause notice, being patent from pages 42-47 of the appeal folder, we dispense with pre-deposit and allow the appeal in favour of the assessee. In the result, stay application and appeal are disposed of.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*