TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/782 /2009 - CU[DB]
ST/S/2956/09

Date 04/01/2010

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

To :
M/S S.S. SONS,

2/44, MALVIYA NAGAR, JAIPUR.

M/S S.S. SONS,

Appellant

Vs

C.C.E. JAIPUR I

Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/274/ 2009 CU[DB]** dated 7.12.09 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/384/09

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.ALOK KOTHARI

A-92, MANISH MARG, NEMI NAGAR, GANDHI PATH, VAISHALI NAGAR, JAIPUR

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,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 7.12.2009

Stay Application No.2956 of 2009 and Service Tax Appeal No.782 of 2009

Arising out of the order in appeal No.74(DK)S.T./JPR-I/2009 dated 6.8.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur I.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

M/s S.S. Sons ... Appellant/applicant

Vs.

C.C.& C.Ex., ... Respondent

Appearance:

Shri Alok Kothari, Charte' :d Accountant for the appellant/applicant
Shri S.R. Meen,, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

Final

Oral Order No. ST/274/09

Per D.N. Panda: Stay Order No ST/384/09

Shri Alok Kothari, learned Chartered Accountant submits that definition of the term "Residential Complex" given by Section 65(30a) of the Finance Act, 1994 read with page 43 of the appeal folder does not throw light to establish construction of any residential complex by the appellant. He submits that merely because overhead water tank was constructed in terms of the work order of the Rajasthan Housing Board the appellant cannot be brought to the ambit of the provider of service of construction of residential complex for imposing service tax of Rs.7,43,462/-. Therefore, he prays that dispensing pre-deposit, appeal may be heard.

2. Learned DR opposes to the submission of the learned authorised representative for the appellant. He submits that the appeal was dismissed by the learned Appellate authority for the reason that neither there was any pre-deposit made by the Appellant nor any application for waiver of pre-deposit was made to that Authority. Therefore, he submits that appeal of the Appellant is not maintainable before this forum.

3. We have heard submissions of both sides and perused the records. We have understood that the appeal was not entertained by learned first Appellate authority for the reasons stated aforesaid by learned DR. We appreciate that no Appellant shall prefer to cause prejudice to himself. But for ignorance of law stay application might not have been filed by Appellant. Learned Authorised Representative for Appellant agrees that the appeal was not decided on merits. We have looked into substance of the case of the appellant and notice that the appellant has a prima facie case to be heard without insisting pre-deposit and such dispensation could have been made by learned Commissioner (Appeals) in exercise of his discretionary power. To do justice, we send the matter back to the learned Commissioner to hear the appeal on merits without calling for pre-deposit. In the result, we dispose of both the stay petition and the appeal in the manner indicated above and transmit the matter to the learned Commissioner (Appeals) to decide the appeal on merits without insisting on any pre-deposit.

(M. Veeraiyan)
Member (Technical)

(D.N. Panda)
Member (Judicial)

scd/