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

Appeal No. ST/867 /2008 – SM[BR] WITH ST / STAY / 2723/2008 Date 20/03/2009

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

To :
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.
C.C.E. MEERUT I

Appellant
Vs
M/S SURENDER KUMAR,
Respondent

I am directed to transmit herewith a certified copy of **Final order No 226 / 2009 –SM[BR]&S/ 71/2009** dated 16.3.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S SURENDER KUMAR,
   VILL- DEVPUR, P.O.IQBALPUR, ROORKEE (UTTARAKHAND)
2. Adv. / Consult
   NONE;----------------

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-II

Date of hearing/decision: 27.02.2009

Service Tax Stay No. 2723 of 2008 in Service Tax Appeal No. 867 of 2008 - SM

CCE, Meerut-I ...Appellant

Vs.

Surender Kumar Respondent

Appeared for Appellant - Mr. M.M. Singh, DR
Appeared for Respondent -None

Coram: Hon'ble Mr. D.N. Panda, Judicial Member

Stay order No. 71/09-SM(BR)
Final Order No. 226/09-SM(BR)

Per D.N. Panda

None present for the appellant.

2. Learned DR submits that the order in appeal suffers from legal infirmity. He vehemently object the findings in the order in appeal submitting that department has no grievance if an assessee gets proper opportunity under the law. But the order that been granted relief has misdirected itself. He submits that the appellant whether is a cargo handling agency or not should be first decided. Thereafter, making assessment of all other services provided by the respondent, the exemption limit may be invoked if that is permissible under law for grant of relief to the respondent. Therefore, the order appealed should go back for thorough examination to ascertain liability and declaration therefore on examination of the services provided and thereafter to come to the conclusion whether threshold limit is invokable.

3. Heard the learned DR.

4. Although this matter is fixed for stay hearing today. It appears that Revenue has been prejudiced without a reasoned order passed by the learned Commissioner (Appeals), the appeal itself is proposed to be decided by this order dismissing the stay application.

5. Averment of learned DR has forces when page 4 of the appeal order is looked into. The learned Commissioner has come to the conclusion that the appellant has not provided cargo handling service. His decision does not flow from the material on record in absence of examination of the agreement or the letter of appointment which gave rise to the consequence of the service. Therefore, it is necessity of the law that the learned Commissioner should first come to the conclusion on the basis of the material evidence and law that whether the facts and circumstances of the case, on analysis, brings the appellant to "cargo handling service". Thereafter, he has to examine the other service provided by the Respondent which are also patent from the order appealed at page 4. Making overall assessment of the services and on declaration of the liability, threshold limit, if any, shall be applicable to be examined.

6. On the aforesaid observation it has become necessary to send the matter back to the learned Commissioner who shall grant an opportunity of hearing to the Respondent and deal the matter in accordance with law, passing a speaking and reasoned order.

7. In the result appeal of the Revenue is remanded to do justice to both sides.

(Dictated and pronounced in the open Court).

[D.N. Panda]
Judicial Member

[Pant]