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
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/803 /2008,56 /2009 – SM[BR] Date 16/06/2009

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA Appellant
Vs
M/S ASIAN CRANES & ENGINEERING SERVICES, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 570- 571 / 2009 –SM[BR] dated 21.5.2009 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 ASIAN CRANES & ENGINEERING SERVICES,
NESTLE-II, COMPOUND ROAD, V.P.O.DUNNE-KE, MOGA.
2. Adv. / Consult SHRI AALOK ARORA ADV.
82, MISSINCOMPOUND SAHARANPUR[U.P]

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
(SM Appeal Branch)

M/S ASIAN CRANES & ENGINEERING SERVICES,
NESTLE COMPOUND ROAD,VPO-DUNNE-KE, MOGA (PUNJAB)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Appeals Nos.ST/803/08 and 56 of 2009-SM (BR)

Arising out of common Orders-in-Appeal No.262/CE/Ldh/2008 dated 08.09.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:21.05.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
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? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

Service Tax Appeal No.803 of 2008-SM (BR)

CCE, Ludhiana .....Appellants

Vs.

M/s. Asian Cranes & Engg. Services ...Respondent

Service Tax Appeal No.56 of 2009-SM (BR)

M/s. Asian Cranes & Engg. Services ....Appellants

Vs.

CCE, Ludhiana ...Respondent

Shri S.K. Bhaskar, ld. Departmental Representative represents the Department
Shri Alok Arora, ld. Advocate represents the party.

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 570-571/09-SM(BR)/Dated:21.05.2009

Per P.K. Das:

Both the appeals are arising out of common order and both the appeals are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the assessee are providing services to M/s. Nestle India Ltd. in their premises in relation to RMG/EOT crane operations for handling/staking of containers alongwith the requisite manpower to M/s. Nestle India Ltd. Show cause notice dated 21.02.2007 was issued proposing to demand of tax under the category of storage and warehousing services, Manpower Recruitment or Supply Agency Services and Management or Maintenance or Repair Services for the period 1.1.2006 to September, 2006, which is pending before the Adjudicating Authority. Subsequently, another show cause notice dated 5.2.2008 was issued on the same services demanding tax of Rs.6,04,025/- for the earlier period 1.4.2003 to 31.12.2005, which is the subject matter in the present case. The Original Authority confirmed the demand of tax and imposed penalty of equal amount under Section 78 of the Finance Act, 1994 and also imposed penalty under Section 77 and 76 of the Act. By the impugned order, Commissioner (Appeals) held that demand of tax on Manpower Recruitment or Supply Agency Services and Storage & Warehousing Services are not sustainable. He upheld the demand of tax on Management, Maintenance or Repair Services during

the period 2003-2004 and 2004-2005 and also extended the exemption benefit for the year 2005-2006. He also imposed penalty under Section 78 and set aside the penalty under Section 76 and 77 of the Act. Hence, the assessee filed the appeal against the demand of tax on Maintenance or Repair Services and penalties. Revenue filed appeal for imposition of penalty under Section 76 and 77 of the Act.

3. Ld. Advocate on behalf of the assessee contested the demand of tax mainly on limitation. He fairly submits that he is not contesting the demand of tax on merits. He submits that there is no suppression of facts with intent to evade payment of tax. He also submits that on the similar issue, earlier show cause notice dated 21.02.2007 was issued for normal period of limitation and there is no allegation of suppression of facts with intent to evade payment of tax. He further submits that in the subsequent show cause notice dated 5.2.2008, which was the subject matter in the present appeal, there was proposal of demand of tax in three categories and the Commissioner (Appeals) dropped the demand of tax on two categories after examining the agreement between the parties. He also submits that the Commissioner (Appeals) extended exemption benefit for the period 2005-2006. He further submits that the demand of tax for the extended periods would approximately Rs.19,000/-. However, it was not quantified by the lower authority till date.

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the assessee admitted the

acceptance of the amount from M/s. Nestle India Ltd. in respect of Repair/Maintenance Services, which was not disclosed to the Department. He also submits that such evidences establish the suppression of facts with intent to evade payment of tax. He also submits that the assessee had not filed Return in respect of Repair or Maintenance etc.

5. After hearing both the sides and on perusal of the records, I find force in the submission of ld. Advocate. It is seen that the assessee rendered the services in the premises of M/s. Nestle India Ltd. on the basis of the agreement. It is also noticed that the Central Excise Officers examined the records of M/s. Nestle India Ltd. and thereafter, demand of tax on three categories was proposed. The Original Authority confirmed the demand of tax on the above three categories. However, the Commissioner (Appeals), after examining the agreement, dropped the demand of tax in respect of two categories. It is also noticed that the Commissioner (Appeals) extended the benefit of exemption notification for the period 2005-2006. It has observed that the demand only in respect of Repair and Maintenance Services provided by the appellant is sustainable and the allegation of suppression of facts also stands proved on this account. In my view, it appears that the assessees were under the bona fide belief regarding the levy of tax on such activities. The Department also, after examining the facts, dropped the demand in two categories. He has also extended exemption benefit partly for the

extended period of limitation. Therefore, the demand of tax for the extended period of limitation is not sustainable. Accordingly, the demand of tax is set aside on limitation.

6. In view of the above discussions, the impugned order in so far as the demand of tax on Repair or Maintenance Services and penalties are set aside. The appeal filed by the assessee is allowed and the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 21.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.