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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/346 /2007 - CU[DB] Date 17/05/2010

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

To :
M/S HARSHITA HANDLING
286, KALPNA NAGAR, PIPLANI, BHOPAL
462021

M/S HARSHITA HANDLING Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/26/ 2010 CU[DB]** dated 26.04.10 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
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
MR.Z. U. ALVI
D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01
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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 Office Copy
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT NO. III

SERVICE TAX APPEAL NO. 346 OF 2007

[Arising out of Order-in-Appeal No.118/ST/BPL/2006 dated 30.3.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

Dated of hearing/decision: 26th April, 2010

For approval and signature:

Hon'ble Dr. C. Satapathy, Member (Technical);
Hon'ble Mr. D.N. Panda, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	yes
2.	Whether it would be released under Rule 27 of the 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. Harshita Handling — Appellants

Vs.

CCE, Bhopal — Respondent

Appearance:

Shri Z.U. Alvi, Advocate for the Appellants;
Shri Sansar Chand, Authorised Representative (DR) for the Revenue

Coram:

Hon'ble Dr. C. Satapathy, Member (Technical);
Hon'ble Mr. D.N. Panda, Member (Judicial).

FINAL ORDER NO. 57/26/10 **dated**

Per D.N. PANDA:

The only dispute in this appeal is whether the activity carried out by the appellants shall be "Repair & Maintenance" service or "Statutory obligation of technical inspection and certification" service.

2. When the appellants were periodically testing the cylinders under Gas Cylinder Rules, 2004 framed under Section 5 & 7 of Indian Explosive Act 1884,such a service was construed by Revenue authority as maintenance and repair.

3. Learned Counsel appearing on behalf of the appellants submitted that the activity carried out by the appellants was neither maintenance nor repair meant for public but statutory obligation discharged under the Explosive Act, 1884. The testing and inspection is statutory one discharged on behalf of the Indian Oil Corporation in terms of work order dated 28.11.2001. In the absence of maintenance or repair the service cannot be called so.

4. Revenue's argument is that orders have been passed by the lower authorities properly analyzing the work order placed by I.O.C., Bhopal. Therefore, no interference should be made to the appellate order passed by the learned Commissioner (Appeals).

5. Heard both sides and perused the record. No evidence was brought to our notice by Revenue to appreciate basis of levy of service tax of Rs. 5,17,673/- under the category of "Maintenance and Repair". The appellate authority had allowed Small Scale exemption benefit under Notification No. 06/2005 dated 1.3.2005 subject to verification by the adjudicating authority. There is no material on record to show that the appellants does repair and maintenance of cylinders for all in commercial way. Record only reveals that this appellant was engaged by I.O.C. Ltd. to periodical test and upkeep the cylinders under the requirements of Explosive Act, 1884. Without finding any material to agree with adjudication that there was repair and maintenance activity carried out commercially other than under the requirement of Explosive Act, 1884, we set aside the orders of the authorities below and allow the appeal.

(DR. C. SATAPATHY)
MEMBER (TECHNICAL)

(D.N. PANDA)
MEMBER (JUDICIAL)

RK