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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/197 /2010 - CU[DB]
ST/S/300/10

Date 08/06/2010

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

To :
M/S SHIVA BUILDERS,

228, INDL. AREA, PHASE-II, PANCHKULA
(HARYANA)

M/S SHIVA BUILDERS, Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/32/ 2010 CU[DB]** dated 21.05.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Along with Stay Order No ST/106/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.J.P.KAUSHIK
   A-14/3, SFS FLATS, SAKET, NEW DELHI-110017
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. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Service Tax Stay Application No.300/2010/Cust. Br. in
Service Tax Appeal No.ST/197/2010

[Arising out of Order-in-Original No.66/ST/CHD-I/2009 dated 13/16.11.2009 passed by the Commissioner of Central Excise, Chandigarh-I]

Date of Hearing:21.05.2010
Date of decision: 21.05.2010

M/s. Shiva Builders ...Appellant

Vs.

CCE, Chandigarh-I ... Respondent

Present for the Appellant :Shri J.P.Kaushik, Advocate
Present for the Respondent:Shri Mahesh Kumar Rastogi, DR

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

Final **ORDER NO.** ST/32/10 **DATED:21.05.2010**
Stay Order No ST/106/10

PER: D.N.PANDA

Moving the stay application, ld. Counsel submits that soon after passing of the first appellate order on 16.4.2009 the Revisional Authority issued a show cause notice on 16.6.2009, which is two months there after proposing to impose penalty on the appellant invoking provision of sections 76 & 78 of the Finance Act, 1994. Ld. Counsel submits that the appellant has no grievance against the first appellate order dated 15.4.09. That being acceptable to the appellant, the appellant has also not come in appeal before the Tribunal. According to him, the revisional order passed on 13.11.09 is unsustainable because of conflict of exercise of jurisdiction. Therefore, he prays that considering the judgment of Hon'ble High Court of Rajasthan in the case of Union of India vs. Inani Carriers reported in 2009 (13) STR 230 (Raj.), the appellant's appeal should be allowed, so also the stay application be disposed.

2. Repelling the aforesaid arguments, ld. DR submits that revenue was aggrieved for which the suo-moto revision power was exercised for revision of the Order-in-Original under section 84 of the Finance Act, 1994, by the ld. Commissioner. Therefore, that order holds the field.

3. Heard both sides and perused the records. We are not in agreement with the revenue's submission, when we find that revenue did not wait to initiate suo-moto revision proceedings after examination of the appellate order passed by the ld. Commissioner (Appeals). Within two months of passing of the order by the appellate authority, the show cause notice was issued by revisional authority on 16.6.2009, while first appellate order was passed on 16.04.2009. Similar such cases are coming before us frequently. It is embarrassing for us to declare exercise of jurisdiction by one Commissioner is bad and by the other good. But in this case we are compelled to declare that the revisional order was unsustainable following the judgment of the Hon'ble High Court of Rajasthan in the case cited (supra). When we noticed that this case is of similar nature, what that was before the Hon'ble High Court of Rajasthan, where the first appellate order was passed on

13.10.04 and notice for revision was issued on 12.8.05, we dispose the appeal of the appellant as allowed, so also dispose the stay application.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita