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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/773 /2010 - CU[DB] Date 20/12/2010
ST/S/1464/10

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

To :
M/S. MAKKAR CONSTRUCTION CO.
267, MAYA NAGAR, CIVIL LINES, LUDHIANA.

M/S. MAKKAR CONSTRUCTION CO. Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/104/ **2010 CU[DB]** dated 15.12.10 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/297/10

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.DSK LEGAL, ATTORNEY & SOLICITORS
   A-62,ARADHANA .SECTOR-XIII, N DELHI.110066
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. 2, R.K. Puram,
NEW DELHI

COURT No. II

ST/STAY NO. 1464 OF 2010 IN AND SERVICE TAX APPEAL NO. 773 OF 2010

[Arising out of Revision Order No. 08/LDH/2010 dated 26.03.2010 passed by the Commissioner, Central Excise, Ludhiana]

Dated of hearing/decision: 6th December, 2010

For approval and signature:

Hon'ble Shri D.N. Panda, Member (Judicial);
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. Makkar Construction Co., Appellants

Vs.

CCE, Luchiana Respondent

Appearance:

Shri Balbir Singh, Advocate for the appellant;
Shri S. N. Singh, Authorised Representative (SDR) for the Revenue

Coram:

Hon'ble Shri D.N. Panda, Member (Judicial);
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final **ORDER NO.** ST/1044/10 **dated** 15.12.10

Stay order No. ST/297/10

Per D.N. PANDA:

Learned Counsel submits that there is permissible deduction of 67% of the gross value of the contract to determine the value of the taxable service in respect of the work envisaged by notification No. 15/2004-ST dated 19.9.2004. But such allowance has not been considered by the adjudicating authority without any cogent reason stated in the order.

2. When pleading as above came out, we tried to look into the order passed by the adjudicating authority in terms of proviso to Section 84 of the Finance Act, 1994. We find that the authority had tried to analyse the notification but could not demonstrate in the order the basic consideration for disallowance. None of the paragraphs from 4.3 to 4.6 of the adjudication order reflects about the fair application of mind before denial. We do understand that he shall have again to undergo the re-adjudication process to do justice since there is no other go but to remand the matter back to him to pass a reasoned order demonstrating reasons of his decision. He shall afford reasonable opportunity of hearing to the appellant before passing the order. The appellant is directed to produce all the evidences in support of his claim on deduction to satisfy the authority so that intended benefit under notification No. 15/2004-ST

dated 10.9.2004 is not abused. While looking into the VAT return appearing at page 45 of the appeal folder we also appreciate that there is involvement of goods. Therefore, we are of conclusion that the appellant may have claim for the exemption discharging his burden of proof. We dispense with the requirement of pre-deposit and remand the matter to the learned adjudicating authority for re-adjudication as expeditiously as possible.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMEBR

RK