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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. E/1729/2009 – SM[BR] Date **13/01/2011**

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

To :
M/S GRIPWELL TOOLS INDUSTRIES
C-104, FOCAL POINT EXTENSION, JALANDHAR.

M/S GRIPWELL TOOLS INDUSTRIES Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 43 / 2011- **SM[BR]** dated 6.1.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
MR.HARVINDER SINGH,ADV
34/10, RAJ NAGAR, KAPURTHALA
ROAD, SUNNY BISTER
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.E/1729 of 2009-SM

Date of Hearing: 06.01.2011
Date of Decision: 06.01.2011

(Arising out of Order-in-Appeal No.28/CE/Appl/Jal/09 dated 2.02.2009 passed by the CCE(A), Chandigarh)

For approval and signature:
Hon'ble Mr.M.Veeraiyan 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?	Yes
2	Whether it should 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.Gripwell Tools Industries — Appellant

Vs.

CCE, Jalandhar — Respondent

Present for the Appellant: Shri Harvinder Singh, Advocate
Present for the Respondent: Shri S.K.Bhaskar, SDR

Coram: Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final **ORDER NO.** 43/2011 SM (BR)

PER: M.VEERAIYAN

This is an appeal filed by the appellant against the order of the Commissioner (Appeals) No.28/CE/Appl/Jal/09 dated 2.02.2009.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are engaged in the manufacture of hand tools and they have also exported some consignments of hand tools. In connection with the export, they paid commission to the overseas commission agent. The original authority held that in respect of the services received from the overseas commission agent, they paid commission during the period 09.07.04 to 09.09.04, and they are required to pay service tax under the category of business auxiliary service as recipient of service from the foreign service provider. The appellants paid service tax amounting to Rs.54,682/- on 24.10.06. The original authority in addition confirming the demand of duty, ordered recovery of interest and also imposed penalty of Rs.10,000/-. Before the Commissioner (Appeals), the appellants have not contested the demand of duty and contested only liability to pay interest and penalty. The Commissioner (Appeals) has set aside the interest but upheld the penalty of Rs.10,000/-.

4. Learned Advocate fairly concedes that though they have raised the liability to pay service tax in the appeal memorandum but they have not raised this issue before the Commissioner (Appeals). However, for the purpose of contesting the penalty, he submits that in respect of services received from the Foreign Service provider no service tax is liable to be paid by the recipient for the period prior to 18.4.2006 when the section 66A was introduced in the Finance Act.

5. Learned SDR reiterated the findings and reasoning of the Commissioner (Appeals).

6. I have carefully considered the submissions made from both sides and perused the records. The issue of liability to service tax cannot be decided by the Tribunal in the present appeal as the matter was not agitated before the Commissioner (Appeals). However, in the light of the submission made by the learned Advocate, I hold that there is no justification for imposition of penalty. The order of the Commissioner (Appeals) imposing penalty is therefore is set aside and the appeal is allowed with consequential relief as per law.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

mk