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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. ST/695 /2009 – SM[BR] Date 03/05/2010

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant
Vs
M/S MANUFEX(INDIA) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 467 / 2010 –SM[BR] dated 27.4.2010 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 MANUFEX(INDIA)
   S.B.INDUSTRIES COMPOUND, KAILAH ROAD, NH-11, SIKANDARA, AGRA.
2. Adv. / Consult
   NONE;--------------------
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
14. Guard file
15. TAXINDIAONLINE.COM PVT.LDT. UNIT NO.1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 695 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 127-ST/APPL/KNP/2009 dated 5.6.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur]

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?	:	NO
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

Commissioner of Central Excise and Service Tax, Kanpur ... Appellants

Vs.

M/s. Manufex (India) ... Respondents

Appearance:

Shri S.N. Srivastava, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 27.4.2010

Final ORAL ORDER NO. 467/2010-SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No. 127-ST/APPL/KNP/2009 dated 5.6.2009.

2. None appeared for the respondents inspite of notice. Heard the learned SDR.

3. The respondent was recipient of services from overseas service provider relating to period June, 2005 to March, 2007. The respondents paid service tax and subsequently sought for refund of the same on the ground that they were not liable to pay the service tax, as they were only recipient of service. The original authority rejected the entire refund claim. On appeal by the party, the Commissioner (Appeals) decided partly in favour of the party and partly in favour of the department. He held that the party was eligible for refund of the Service Tax paid by them for the period prior to 18.4.2006 when section 66A was introduced. Commissioner (Appeals) relied on the decision of the Hon'ble High Court of Bombay in the case of Indian National Ship Owners Association vs. Union of India [2009 (013) STR 0235].

4. On the date of earlier hearing, the learned DR sought for adjournment to find out whether the department has filed any SLP. On instructions, he submits that the Department filed SLP No. 18932 of 2009 against the decision of Hon'ble High Court dated 11.12.08 cited supra and the same

has been dismissed. It is thus, settled law that recipient was not required to pay Service Tax prior to introduction of section 66 A of the Finance Act.

5. In view of the above, there is no valid ground to interfere with the order of the Commissioner (Appeals).

6. The appeal is rejected.

(M. Veeraiyan)
Member(Technical)

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