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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/169 /2010 – SM[BR] , ST/ STAY / 246 / 2010-SM[BR] Date 25/05/2010

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA Appellant

Vs

M/S RAMESH STUDIO & COLOR LAB, Respondent

I am directed to transmit herewith a certified copy of **Final order No**.581 / 2010-SM[BR] &S/193 /2010 dated 10.5.2010 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 RAMESH STUDIO & COLOR LAB,
   RURKA ROAD, GORAYA, DISTT. JALANDHAR.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA, ADVOCATE
   13-R, HUKAM CHAND COLONY, NEAR D.A.V. COLLEGE JALANDHAR
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. LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI -110070.

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/S 246/10, ST/Appeal No.169/2010-SM(Br)

(Arising out of order in appeal No.12/STC/Ldh/10 dated 28.1.10 dated passed by the Commissioner of Central Excise (Appeals), Ludhiana)

For approval and signature:
Hon'ble Shri Ashok Jindal, 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?	:	No
2.	Whether it should 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?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

CCE, Ludhiana — Appellant

Vs

M/s Ramesh Studio & Color Lab — Respondent

Appeared for Appellant : Shri R.K. Saini, DR
Appeared for Respondent : None

Date of Hearing: 30.4.2010

Coram: **Hon'ble Mr.Ashok Jindal, Judicial Member**

Final Order No. 581 /2010 SM(Br) &
Per Ashok Jindal: S-193/2010 SM(Br)

Revenue has field this appeal along with stay application. Today the matter was listed for disposal of stay application. After hearing at length, I find that there is no merit in the stay application and I have taken up the appeal also for disposal for which the learned DR fairly agreed.

2. The facts of the case are that the respondents are engaged in providing photography services and are registered with the department for payment of service tax. During the course of audit, it was observed that the respondent during the financial year 2002-03 surrendered income of Rs.11 lakhs to Income-tax Department. The said amount was found in cash in the business premises of the respondent. The Department has alleged that the generation of cash is on account of clandestinely providing service under reference without payment of service tax. It was also alleged that the respondent has no business accept providing service of photography and the amount surrendered before the Income-tax is to be added in the assessable value for calculating the service tax liability. Accordingly, service tax demand was confirmed with interest under Section 75 and various penalties were also made under Section 77,77 and 78 of the Finance Act, 1994. The respondent preferred appeal before the Commissioner (Appeals) who dropped the demand holding that the income voluntarily disclosed before the Income-tax Department, which was suppressed by the party cannot be added to the taxable value unless there is evidence to prove the same. Aggrieved from the same, the Revenue is before me.

3. Learned DR submitted that in this case, the respondent has photography business and admitted income of Rs.11 lakhs. Hence

the amount is to be added in the taxable service. Hence the order is liable to be set aside.

4. None appeared on behalf of the respondents.

5. Heard On perusal of the record, a query was made to the learned DR whether this allegation that the amount disclosed before the Income-tax authorities is corroborated by any evidence or not. The learned DR fairly agreed that the department has not done any exercise to support this allegation and there is no corroborative evidence or document on record to show-cause notice that the amount disclosed by the respondent before the Income-tax authority is an amount of taxable service. He fairly agreed that the appeal and stay application both can be disposed of at the same time.

6. In the case of Kipps Education Centre Bathinda Vs CCE Chandigarh reported in 2009 (13) STR 422 (Tri Del), it was held by this Tribunal that income voluntarily disclosed before the income tax authorities could not be added to the taxable value unless there is evidence to prove the same. In this case also, there is no evidence to show that the income disclosed is the part of taxable service. Hence I do not find any infirmity in the impugned order. Accordingly, stay application as well as the appeal are rejected.

(Order dictated and pronounced in the open Court).

(Ashok Jindal)
Judicial Member

MPS*