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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

Date 06/07/2010

Appeal No. ST/289 /2009 – SM[BR]

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

To :
M/S K.S. TRANSFORMERS PVT. LTD.
F-51, INDUSTRIAL AREA, SIKAR (RAJASTHAN)

Appellant
Vs
Respondent

M/S K.S. TRANSFORMERS PVT. LTD.

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No.** 683 / 2010 –SM[BR] dated 15.6.2010 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
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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
(SM Appeal Branch)

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

Date of Hearing/Decision:15.06.2010

Service Tax Appeal No.ST/289/09-SM

[Arising out of Order-in-Original No.03/2009 (ST) dated 09.02.2009 passed by the Commissioner, Jaipur].

M/s. K.S.Transformers (P) Ltd. ...Appellant

Vs.

The Commissioner of Central Excise, Jaipur-I ... Respondent

Present for the Appellant :Ms. Asmita Nayak, Advocate
Present for the Respondent:Shri.R.K. Gupta, DR

Coram: HON'BLE MR.DN.PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 683/2010 SM(BR) **DATED:15.06.2010**

PER: D.N.PANDA

Ld. Counsel's precise argument is that service tax on the job work was not leviable during the material period i.e. January, 2006 to October, 2006. The moment such a legal position came to light, principal manufacturer issued debit note to the present appellant who was a job worker. There is no dispute from the ER I return that the recipient of service i.e. the manufacturer has not claimed any cenvat credit on the basis of the job work invoice issued by the appellant. This factual aspect is proved from the debit notes issued by the manufacturer and that was led as evidence before authorities below. The same is also verifiable from page 57 and 58 of the appeal folder. There is no dispute at all that this appellant does not disagree to the proposition of the manufacturer. Once the tax liability was known to each other and that too, when there was no liability at all, this appellant should not suffer to get back the money wrongly paid back to the revenue. In support of her claim, ld. Counsel submitted that Hon'ble High Court of Karnataka in the case of Commissioner of Service Tax, Bangalore vs. Shiva Ciba Analytical (I) Ltd. – 2009 (14) STR 301 (Kar.) and Hon'ble High Court of Rajasthan has approved the methodology of debit note and credit note agreeing with the Tribunal's decision which were considered in those cases, as basis for granting refund. Therefore, this appellant should not be denied refund by the first appellate order.

2. Ld. DR's submission is that after long time the debit note was issued by the manufacturer to the appellant. Such fact is not in dispute on record. When the appellant did not come forward immediately to claim the refund, it is disentitled to the same following the decision of the Tribunal in the case of Commissioner of Central Excise, Jaipur-II vs. Adarsh Guar Gum Udyog reported in 2000 (120) ELT 138 (Trib.).

3. Heard both sides and perused the factual position submitted by the ld. Counsel which is apparent from para 10 of the appellate order at page 3 thereof. Ld. Commissioner considered the decision cited by the Revenue and held that bar of unjust enrichment is applicable to the present case.

4. The Hon'ble High Court of Karnataka in the case of Commissioner of Service Tax, Bangalore vs. Shiva Ciba

Analytical (I) Ltd. - 2009 (14) STR 301 (Kar.) noticed that when the Tribunal held that since the assessee issued credit notes towards refund of service tax, relying upon Apex Court Judgement in Mohd. Ekram Khan & Sons vs. Commissioner of Trade Tax - 2004 (6) SCC 1083-SC the revenue's appeal was liable to be dismissed.

5. Hon'ble High Court of Rajasthan in the case of Union of India vs. A.K. Spintex Ltd. reported in 2009 (234) ELT 41 (Raj.) held that passing on the burden of excise duty to the next purchaser, can not be left in the realm of presumption. In cases, where the assessee is able to show, that the burden is not passed on, or it has been reversed, the claim of refund cannot be denied, discarding revenue's argument that mechanism of issuance of debit notes and credit notes, if countenanced, it will open flood gates for pilferage of revenue, the Hon'ble High Court of Rajasthan did not agree with the proposition that it can open flood gates, inasmuch as, where false, fictitious or shame Debit note and credit note are issued for adjustment, the revenue can very well lead evidence, or can lead evidence in rebuttal. Simply because the revenue fails, and is not able to rebut evidence, it cannot be assumed, that it will open flood gates for pilferage of the revenue. Difficulties may be on either side, but then, that cannot be considered as a ground for interpreting Sec. 12B, in the manner the revenue wants us to interpret it.

6. When no investigation was done to prove that the debit note was wrong, revenue's pleas do not sustain relying on the

Single Member decision in the case of Commissioner of Central Excise, Jaipur-II vs. Adarsh Guar Gum Udyog cited (supra). It is also a case that when there is no liability the appellant should not suffer. No taxes can be realised without the letters of law. That is an admitted case in the present appeal, in view of the finding in para 10 of the appellate order.

7. In view of the aforesaid basis of law this appellant should succeed. Accordingly, appeal is allowed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita