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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/544 /2010 – SM[BR] Date 01/09/2010

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

To :
M/S JAIPRAKASH ASSOCIATES LIMITED,
45/21, MUIR ROAD, NEAR TRAFFIC LINE CROSSING,
ALLAHABAD-211002.

M/S JAIPRAKASH ASSOCIATES LIMITED, Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 929 / 2010-SM[BR] dated 25.8.2010 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 ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision:25.8.2010

Service Tax Appeal No.544 of 2010-SM

Arising out of the order in appeal No.95/ST/APPL/ALLD/09 dated 24.12.09 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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 Jaiprakash Associates Limited ... Appellants

Vs.

C.C.E., Allahabad ... Respondent

Appearance:

Shri R.K. Hashija, Advocate for the appellant
Shri K.P. Singh, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 929/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 95/ST/APPL/ALLD/09 dated 24.12.09.

2. Heard both sides.

3. The appellants paid service tax on Goods Transport Agency services as recipient. For the quarter ending March 2005, they paid an amount of Rs.92,319/- in excess of what is required to be paid. Surprisingly, they indicated the amount of service tax payable and still chose to pay higher amount. Thereafter, they filed refund claim of the excess amount of service tax paid on 26.8.2008. The original authority rejected the claim as having been filed after the stipulated time limit prescribed under Section 11B of the Central Excise Act. The Commissioner (Appeals) upheld the order of the original authority.

4. Learned Advocate for the appellants submits that the amount paid in excess for the quarter ending March 2005 should not be treated as service tax and therefore, time limit prescribed under Section 11B does not apply. He also relies on the decision of the Hon'ble Karnataka High Court in the case of C.C.E., Bangalore III vs. Motorola India Pvt. Ltd. reported in 2006 (206) ELT 90.

5. Learned SDR reiterates the finding and reasoning of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. No explanation is forthcoming as to why the appellants chose to pay higher amount of service tax when they knew that the amount of service tax payable was lower. However, this hardly matters for this issue on hand. When service tax payable is correctly paid, the question of refund of the said amount or part of it does not arise. A refund arises only when tax paid is in excess of what is payable. Whatever paid in excess in whichever circumstances requires to be claimed as refund as provided under the law. If it was not the service tax amount, the question of Central Excise authority giving refund does not arise. The decision of the Hon'ble High Court in the

case of Motorola India Pvt. Ltd. relates to a case where the High Court did not interfere with the decision of the Tribunal in the facts and circumstances of the said case. It has been clearly held therein that in the facts of the said case, no question of law arises. In view of the above, it cannot be said that there is any ratio laid down by the Hon'ble High Court in the said case.

7. This is not a case where an amount has been paid as service tax when no service tax was payable at all. This is only case of excess amount of service tax paid. Therefore, the remedy of refund claim should be strictly in accordance with the provisions of Section 11B of Central Excise Act which has been made applicable to service tax matters.

8. I do not find any infirmity in the order of the Commissioner (Appeals). The appeal is, therefore, rejected.

(M. Veeraiyan)
Technical Member

scd/