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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/934 /2009 – SM[BR] Date 06/09/2010

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

To :
M/S CHHAYA AGENCY,

18, GOPALGANJ, JHANDA CHOWK, SAGAR (M.P.)

M/S CHHAYA AGENCY, Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order** No.948 / 2010 –SM[BR] dated 26.8.2010 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 BHOPAL

   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult

   MR.SATISH KUMAR GOSWAMI

   12 GOPAL GANJ, DR.GOUR MARG, NEAR BANGALI KALI BADI, SAGAR(M.P), 470001

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)

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

Service Tax Appeal No. 934 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 289/BPL/2009 dated 27.7.2009 passed by the Commissioner of Customs & Central Excise and Service Tax (Appeals), Bhopal.]

For approval and signature:

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

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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

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M/s. Chhaya Agency — Appellants

Vs.

Commissioner of Central Excise
Bhopal (MP) — Respondent

Appearance: None for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 26.08.2010

Final

ORAL ORDER NO. 948/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 289/BPL/2009 dated 27.7.2009.

2. None appears for the appellants. When the matter was fixed for hearing on 4.3.2010, the advocate sought for adjournment stating that "the date is not suitable for some unavoidable circumstances" When the matter was again fixed for hearing on 14.7.2010, adjournment was sought for a month for observance of FIR attached with the application. When the matter is fixed for today, the learned advocate has sent a letter dated 15.8.2010 making a request to grant some more time on the humanitarian ground and seeking that the matter may be fixed up "by 27.9.2010 to 5.10.2010 in between and oblige". There is an alternative prayer in the adjournment application which is as follows: "Otherwise we agree with the special request to Hon'ble CESTAT for taking decision on the matter on merit."

3. As several adjournments have been given and no valid reason has been given for adjournment of hearing fixed for today, the matter is taken up for final hearing with the assistance of learned SDR.

4. Heard the learned SDR and perused the records. The Tribunal vide Final order No. ST/132-33/08 dated 7.7.08 in the case of appellants, passed the order holding that the person engaged in procurement of order on commission basis is not covered under the services of clearing and forwarding agent. Thereafter, on 7.11.08 the appellants have filed the refund claim amounting to Rs.1,62,184/- The original authority sanctioned a sum of Rs.200/- only out of Rs.1,62,184/- claimed by the appellants and the

balance was rejected. The Commissioner (Appeals) has upheld the order of the original authority.

5. In the grounds of appeal, it was submitted that the order of the Assistant Commissioner dated 23.9.05 confirming the order of the Service tax ~~set~~ was set aside by the order of the Tribunal dated 7.7.08 and therefore, they are eligible for the refund on merits. It was also submitted that the State cannot deny the refund applying the doctrine of unjust enrichment. It was also submitted that conclusive finding of the CESTAT has been overruled by the lower authority by denying the refund.

6. Learned SDR submits that the refund claim of the appellants partly relates to period not covered by the order of the Tribunal dated 7.7.08. Even otherwise as held by the original authority, the service tax paid by them stands recovered by them from M/s. JP Cement Ltd. Rewa and that M/s. J. P. Cement Ltd. Rewa have taken the credit of Service tax and utilised for payment of duty on their final products. That being the case, refund also become in-eligible on account of unjust enrichment. He also submits that the burden to prove that the service tax was not passed on is on the appellants and they have not produced any evidence contrary to the finding. He, therefore, seeks upholding of the order of the Commissioner (Appeals).

7. I have carefully considered the submissions and perused the records. The Tribunal by order dated 7.7.2008 has no doubt decided the issue in favour of the appellants. The order of the Tribunal does not specifically refer to any refund. No refund as such ~~has to be~~ was sanctioned by the

Tribunal. Any refund arising out of order of any court has to satisfy the bar of unjust enrichment.

8. Under these circumstances, in view of clear findings of the authorities below that the claim is hit by unjust enrichment and in the absence of any evidence contrary to such findings, I do not find any merit in the appeal.

9. The appeal is, therefore, dismissed.

(M. Veeraiyan)
Member(Technical)

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