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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/201/2010 – SM[BR] Date 06/07/2010

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

To :
M/S VIDYUT CONSULTANTS,

128, M.G.ROAD, RAJBADA, INDORE (M.P.)452004.

M/S VIDYUT CONSULTANTS, Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 688 / 2010-SM[BR] dated 25.6.2010 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR. HEMANT BAJAJ ADV.
   A-5,BASMENT LAJPAT NAGAR-III , NEW DELHI
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:17.06.2010

Service Tax Appeal No.ST/201/10-SM

[Arising out of Order-in-Appeal No.IND-1/220/2009 dated 29.09.2009 passed by the Commissioner (Appeals)-I Indore].

M/s. Vidyut Consultants ...Appellant

Vs.

CCE, Indore ... Respondent

Present for the Appellant :Shri.Hemant Bajaj, Advocate
Present for the Respondent:Shri.S.K. Bhaskar, DR

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

Final **ORDER NO.** 688/2010 SM(BR) **DATED:17.06.2010**

PER: D.N.PANDA

The appellant's only grievance is that they were never been unduly enriched at the cost of service recipient in view of the factual verification report obtained by the adjudicating authority from the Jurisdictional Range Superintendent. Ld. Counsel draws attention to para 3 of the adjudication order to support such a proposition. Upon consideration of the factual report, ld. Adjudicating Authority was of the view that the appellant was not enriched at the cost of the service recipient in respect of the bills issued. He was also satisfied with the Chartered Accountant Certificate, which was relied by the appellants. Having come to conclusion that the consideration received for service provided was inclusive of tax under cum-duty principle, anything paid over and above from the actual tax payable became refundable and that resulted with the refund of Rs.1,74,062/-. Therefore ld. Counsel further submits that when there was a factual report from the field formation, without examining the same, conclusion drawn by the ld. Appellate Authority was erroneous.

2. Ld. DR supports the order of the ld. Appellate Authority submitting that when the service tax burden has been passed on to the consumer, this appellant was rightly denied the benefit of refund.

3. Heard both sides and perused the records. The matter in controversy is very simple to decide, whether anything has been paid over and above the tax liability. When the ld. Counsel demonstrates with example from page 16 to page 27 of the appeal folder exhibiting that as against the total realisation of Rs.100/-, tax was calculated taking that amount as basis and there was no tax collected from the consumer, cum-duty price is certainly be presumed to be inclusive of tax according to the followed practice of cum-duty principle. Therefore, anything paid on the basis of Rs.100/- and that is over and above the tax payable on the cum-duty value, definitely the excess shall not be attributable to tax element and also that cannot be said to have been realised by the appellant when factual report shows nothing was realised by the appellant from consumer. The material facts itself being providing answer from the above

example, there is no need to dilate further. Consequently, appeal of the appellant is allowed and the appellant is entitled to the refund.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita