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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/355 /2006 - CU[DB] Date **27/04/2011**

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

To :
C.C.E.JAIPUR-I
NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR.

C.C.E.JAIPUR-I Appellant
Vs
M/S GLOBAL ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/162 2011 CU[DB]** dated 25.04.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S GLOBAL ENTERPRISES
G-151,UDAI PATH,SHYAM
NAGAR,JAIPUR.

2. Adv. / Consult : Mr. A.R.Madhav Rao, Adv
B-6/10 Safdarjung Enclave
New Delhi

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. IV

Date of Hearing : 20.4.2011

ST/ **Appeal No. 355 of 2006**

[Arising out of the Order-in-Appeal No. 43(MPM)ST/JPR-I/2006 dated 31.5.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

CCE, Jaipur — Appellant

Vs.

M/s Global Enterprises — Respondent

Appearance:

Appeared for Appellant : Shri Sonal Bajaj, SDR
Appeared for Respondent : Shri A.R. Madhav Rao, Advocate

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. ST/162/11 dated 25.4.11

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. We have heard both sides duly represented by Shri Sonal Bajaj, ld. SDR and Shri A.R. Madhav Rao, ld. Advocate.

2. After going through the impugned order of Commissioner (Appeals), we find that he has accepted the respondent's stand in respect of one MOU dated 1.4.2000, entered into by the respondent with one M/s Laxmi Cement as Del Credere Agreement and has rejected the Revenue's stand of holding the same as C&F agent agreement. However, in respect of the other three MOUs under consideration, he has accepted the Revenue's stand that the activity provided by the respondent are covered in the category of C&F agents. In respect of the said three MOUs, he has extended the benefit to the respondent on the point of limitation, thus confirming the demand falling within the limitation period. The respondents are not in appeal against the said order of the Commissioner (Appeals) and have accepted their tax liability for the period which falls within the limitation.

3. As regards the MOU dated 1.4.2000 entered into by the respondent with M/s Laxmi Cement, the Commissioner has observed that the terms and conditions of the said MOU revealed that the assessee has been doing the job of Del Credere inasmuch as no activity of loading/unloading, storing, handling of the goods etc. is required to be undertaken by them. As such, on account of the absence of the above activities, he has held that the respondent cannot be held to be providing the services of C&F agents.

Ld. DR appearing for the Revenue agrees that MOU does not have any terms and conditions relating to the above activities of loading, unloading, storing, handling of the goods etc. However, he submits that some of the invoices raised by the appellant reflected upon the above activities being undertaken by them. Ld. Advocate appearing for the respondent submits that there is no such a[illegible] connection between the invoices raised by the appellants towards loading/unloading etc. and they only reflected upon the commission charged by the respondent for the activity of Del Credere.

4. After considering the submissions made by both the sides on the above issue, we find that the appellate authority has taken into consideration the various terms and condition of the MOU dated 1.4.2000 and has clearly came to a finding that the appellants are only appointed as Del Credere and not as C&F agents. In fact, we find from the grounds of appeal raised by the Revenue that there is no rebuttal to the finding of fact that MOU has no terms and conditions requiring the respondents to take the activity of loading/unloading, storing or to deal with the goods in any other manner. In such a situation, we find no infirmity in the view adopted by the Commissioner (Appeals).

5. As regards the other three MOUs, though the appellate authority has held against the respondent but benefit has been extended to them on the point of limitation. It is seen that the period in question from 1.10.2000 to 31.8.2005 and the Show Cause Notice was issued on 1.2.2006. While dealing with the

respondent's plea of limitation, the Commissioner (Appeals) has observed as under :-

> "The Appellants has registered them under the category of Cargo handing agency services and Business Auxiliary services and paying Service Tax, the department has not objected such registration or S.T. returns submitted by the Appellants. In view of this, the Appellants has contended that the charge of suppression of facts is not applicable on them. In view of these facts, I agree with the Appellants view that, there is nothing malafide on the Appellants, therefore, invocation of extended period of demand is not maintainable."

6. Ld. Advocate appearing for the respondent makes it clear that though a part of the demand falls within limitation period but they have not challenged the said order of Commissioner (Appeals) and have accepted the duty liability.

7. We find from the memo of appeal filed by the Revenue that the findings of Commissioner (Appeals) on limitation does not stand challenged by them. There is no ground implicit or explicit in the memo of appeal dealing with the findings of Commissioner (Appeals) on limitation. As such, we uphold the said part of the impugned order of Commissioner (Appeals). Revenue's appeal is disposed of in the above manner.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

RM