14

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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/801 /2010, ST/S/1503/10, ST/M/845/10 - CU[DB] Date **29/04/2011**

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

To :
M/S. STATE BANK OF INDORE (PITAHAMPUR BRANCH),
KHANDELWAL CHAMBERS, MHOW NEEMUCH ROAD, SECTOR-1, PITHAMPUR, DISTT. DHAR.

M/S. STATE BANK OF INDORE (PITAHAMPUR BRANCH), Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/167/ 2011 CU[DB]** dated 26.04.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/271/11

Assistant Registrar
(Customs 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.ARVIND SINGH CHAWLA, CA
4TH FLOOE BCM CITY, NAVLAKHA SQUARE, NEAR PETROL PUMP, INDORE,M.P.

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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 : 28.3.2011

Service Tax Stay No. 1503 of 2010 and Service Tax Appeal No. 801 of 2010, ST/M/845/10

[Arising out of the Order-in-Original No. 04/Commr./ST/IND/2010 dated 3rd March 2010 passed by the Commissioner, Customs and Central Excise, Indore]

Coram:
Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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.

M/s State Bank of Indore — Appellant

Vs.

CCE, Indore — Respondent

Appearance:

Appeared for Appellant : Shri A.S. Chawla, Advocate
Appeared for Respondent : Shri Sheo Narayan Singh, Jt. CDR

CORAM: Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

Stay order No. ST/271/11
Final Order No. ST/167/11 dated 26.4.11

Per **D.N. Panda**

This appeal has been filed by the State Bank of Indore challenging the Adjudication order dated 4.3.2010 levying service tax and cess aggregating to Rs.56,90,281/- with consequential penalty and interest. The Adjudication was made denying benefit under Notification No. 13/2004-ST dated 10.9.2004 and Notification No. 29/2004-ST dated 22.9.2004. Contention of the department was that the conditions of Notification No. 29/2004-ST is not being fulfilled by the Appellant that disentitled them to the benefit of that notification. The notification required exemption of so much of the value of the taxable service provided by banking company in relation to overdraft facility; cash credit facility or discounting of bills, bills of exchange or cheques as is the equivalent to the amount of interest on all the three facilities. The exemption was intended to be granted if that is separately shown in an invoice a bill or, as the case may be, a challan issued for that purpose. The Authority was of the view that the requirement of giving certain descriptions under Rule 4A (i) of Service Tax Rules, 1994 was not fulfilled by the Appellant. ~~Accordingly,~~ In para-13 of the impugned order, the Authority noticed that there was a failure to give particulars. He was of the view that the Appellants action was not in conformity to the rule above.

2. Ld. Counsel appearing on behalf of the Appellant submitted that the Appellant being a banking company has followed all RBI guidelines and nothing was undisclosed. There was no suppression of any detail and the debit slips in all transactions clearly disclose interest and other receipts.

3. Ld. DR appearing on behalf of Revenue supported the order of the authorities below.

4. Heard both sides and perused the record.

5. We are convinced that the Appellant has a banking company and is regulated by RBI guidelines and public norms required disclosure of the earning by the bank. There may be difficulty to strictly give the particulars as required by the Finance Act, 1994 and that may be impediment to get appropriate relief under the notification. Notification No. 29/2004-ST dated 22.9.2004 has a condition that the interest amount is separately sown in any invoice, a bill or, as the case may be, a challan issued for the purpose. If such a requirement of the notification is fulfilled, the technical barrier should not be impediment to grant the appropriate relief to the Appellant if ~~to~~ the authorities are satisfied that there was a disclosure of the income separately. Once we are satisfied primarily that the claimant squarely falls with the exemption zone, further strict instrction is unwarranted under law. However, by this, we do not say that the Appellant shall not satisfy the authority through evidence. With such observation, we are of the view that the Appeal itself should be disposed and we do so with the consent of both the sides. Dispensing pre-deposit, we dispose the appeal with the direction that the Appellant shall adduce the evidence as required by the Notification in question to the authority and plead its case on the issues arising out of the Adjudication with

appropriate evidence. Consequently, the Appeal is remanded to the original Authority to grant fair opportunity of hearing to the Appellant and examine the merits of the case in the light of intention of the exemption notification granting fair opportunity of hearing and pass appropriate order.

(Pronounced in Court)

(Dr. C. Satapathy)
Member (Technical)

(D.N. Panda)
Member (Judicial)

RM