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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/648 /2007 - CU[DB] Date **04/05/2011**

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S S.R. ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/171/ 2011 CU[DB]** dated 02.05.11

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 S.R. ENTERPRISES
MODI COMPLEX, AMBALA-
CHANDIGARH HIGHWAY ROAD,
VILL- BHANKARPUR,
DERABASSI.
2. Adv. / Consult
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 (Haryana)
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

ST/Appeal No.648/2007

(Arising out of order in appeal No.295/CE/Chd/07 dated 6.8.07 passed by the Commissioner of Central Excise (Appeals),Chandigarh)

Date of Hearing: 16.3.2011

For Approval and signature:

Hon'ble Mr D.N. Panda, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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 would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not? No

3. Whether their lordships wish to see the fair copy of the order? Seen

4. Whether order is to be circulated to the Department Authorities? No

CCE, Chandigarh — Appellants

Vs

M/s S.R. Enterprises — Respondent

Appeared for the Appellant: Shri Amesh Jain, DR
Appeared for the Respondent: None

Coram: **Hon'ble Mr D.N. Panda, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. ST/171/11

Per D.N. Panda:

No one is present for the respondent.

2. Revenue being aggrieved by the order dated 6.8.2007 passed by the learned First Appellate Authority, has challenged the decision of that Authority on the ground that expenses indispensable to provide a clearing and forwarding service shall be added to the value of service for taxation. Service becomes complete and delivery thereof becomes possible only by incurring such expenses and therefore, such expenses form part of taxable value of service. Such an aspect was dealt with in detail in CCE, Chandigarh Vs. M/s Team S&S reported in 2011-TIOL-33-CESTAT-DEL. Therefore, the learned DR pleads that the order passed by the Commissioner (Appeals) requires reversal on the basis of law laid down by the Tribunal in the above judgment.

3. Other side is absent. We find the order passed by the learned appellate authority lacks in appreciating material facts. Therefore, we are unable to approve his finding. The learned adjudicating authority has taken pain to portray material facts and has given reasons for his conclusion. Justice can be delivered if material facts are brought to record and examined and law is applied to take a decision. Statute categorically says that Appellate Authority shall state the points for decision, reasons of decision and decision. Unless such a procedure is followed, the order shall not be maintainable.

4. We are reminded of the guidelines given by the Hon'ble Supreme Court in the case of Joint Commissioner of Income-tax, Surat Vs Saheli Leasing & Industries Ltd reported in 2010 (253) ELT 705(SC) explaining how a judgment should be written. Para 7 of the said judgment provides guidance to the Appellate authority who shall do well to take note of the same and also note the judgment of the

Tribunal in the case of CCE Chandigarh Vs M/s Team S&S. He shall grant fair opportunity of hearing to the respondent to pass appropriate order in accordance with law. In the result, the appeal is remanded for passing a speaking and reasoned order at the earliest.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*