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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/286 /2008 - CU[DB] Date **06/05/2011**

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

To :
M/S MAX INDIA LTD.

BHAI MOHAN SINGH NAGAR,RAIL-MAJARA, TEH-
BALACHAUR, DISTT. NAWANSHAHAR, (PB)

M/S MAX INDIA LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/173/ 2011 CU|DB|** dated 29.04.11 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
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.TAPAS RAM MISRA & ORS (ADV.)
INDUS LAW, A-4, SECTOR-26, NOIDA-201301

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)

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

Service Tax Appeal No. 286 of 2008

[Arising out of Order-in-Revision No. 89/CE/Jal/2006 dated 29.11.2006 passed by the Commissioner of Central Excise, Jalandhar]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
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? : NO

2. Whether it should 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 Departmental authorities? : NO

M/s. Max India Ltd. — Appellants

Vs.

Commissioner of Central Excise — Respondent

Appearance:

Shri T.R. Mishra, Advocate for the Appellants
Shri Sheo Narayan Singh, Jt.CDR for the Respondent

CORAM:

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

Date of Hearing/decision : 20.04.2011

Final **ORAL ORDER NO.** ST/173/11

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner passed under section 84 of the Finance Act dated 29.11.2006 by which the order of the original authority which was in favour of the assesses was modified confirming demand of service tax along with interest and imposing penalties under section 76, 77 and 78 of the Finance Act.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants were issued with the show cause notice dated 7.4.2003 alleging that they have rendered the services of consulting engineer without taking registration and without paying service tax and accordingly proposing demand of service tax of Rs. 71,04,4 35/- along with interest and proposing penalties under various sections. The appellant filed reply dated 2.5.2003 contesting the demand. The Original authority vide order dated 30.7. 04 dropped the proceedings. Commissioner issued notice dated 20.11.2006 proposing revision of the order of the original authority and granted time for reply till 27.11.2006 and also directed them to appear for personal

hearing on 27.11.2006. The appellants vide letter dated 27.11.2006 sought for one month time for replying to the show cause notice. The Commissioner without granting time sought for replying and without granting personal hearing decided the matter ex partie and confirmed demand of service tax and imposed penalties as mentioned above.

3. The learned advocate assailed the order of the Commissioner on merits as well as on violation of principles of natural justice. He seeks remand of the matter to the original authority for fresh consideration.

4. Learned Jt. CDR reiterated the finding and reasoning of the Commissioner.

5. We have carefully considered the submissions from both sides and perused the records. The order of the original authority dated 30.11.2004 was in favour of the assessee. The Commissioner has passed the order without acceding to the request of the assessee for additional time to file the reply and without granting personal hearing. The order in revision confirms huge amount of service tax besides imposing penalties. Such order has been passed in clear violation of principles of natural justice.

6. In view of the above, the plea for remand of the matter for fresh consideration merits acceptance. The appellants are directed to file their submissions within 45 days from date of receipt of this order and the Commissioner will consider the matter afresh within two months after the

expiry of time limit prescribed for filing of submissions by the appellants and after granting reasonable opportunity of hearing to the appellant.

7. We clarify that we have expressed no opinion on the merits of the case.

8. Appeal is allowed by way of remand as above.

(Archanā Wadhwa ')
Member(Judicial)

(M. Veeraiyan)
Member(Technical)

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