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/1486/2010 - CU[DB] Date **02/06/2011**
ST/S/3118/10

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

To :
M/S A.G. ENGINEERS,
E-69/1, BULANDSHAHR ROAD, INDUSTRIAL AREA,
SITE-I, GHAZIABAD (U.P.)

M/S A.G. ENGINEERS, Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/219/ 2011 CU[DB]** dated 31.05.11 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/313/2010

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.O.P.BHOLA, CONSULTANT
SB-160, SHASTRI NAGAR, GHAZIABAD (U.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 (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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing: 26.05.2011

Service Tax Stay Appn. No.ST/S/3118/10 in Service Tax Appeal No. ST/1486/10

[Arising out of Order-in-Appeal No.120/ST/GZB/2010 dated 29.06.2010 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Meerut-I

M/s. A.G. Engineers ...Appellant

Vs.

CCE, Ghaziabad ... Respondent

Present for the Appellant : Shri. Dheeraj Sethi, Advocate
Present for the Respondent : Shri B.L. Soni, DR

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. SAHAB SINGH, TECHNICAL MEMBER

Final **ORDER NO.** ST/219/11 **DATED: 26.05.2011**
Stay order No. ST/313/11

PER: D.N.PANDA

This matter came up for hearing of the stay application. But we looked into the magnitude of the demand that is very small being service tax demand of Rs. 48,886/-. Service tax demand is also followed by equal amount of penalty under section 76 and 78 of the Finance Act 1994. So also there is a penalty of Rs.1000/- under section 77 thereof followed by interest under section 75 of the said Act. Therefore, we took up both the stay application and appeal for common disposal by this order, also noticing that the matter is not that complicated to hear the evidence in detail. The appellants grievance is that show cause notice was issued on the conception that Appellant was providing repair and maintenance service as an authorised service provider of a manufacturer. But Department has no evidence to come to that conclusion. Only taking account of some invoices of the appellant, show cause notice was issued. The appellant replied to the authority that no doubt that it is providing repair and maintenance service, but that is neither under any contract nor also in the capacity of authorised service provider by a manufacturer. While it was dealing with certain goods as an authorised dealer, it is not an authorised service provider. The appellant made it clear in terms of para 2 to 7 of reply to show cause notice filed before authorities on 8.11.2008. When the appellant does not fall under the definition of maintenance and repair service under either of the clauses of section 65 (64) of Finance Act 1944, this small tax payer should not be penalised. It is also small service provider to get relief because it has not exceeded the limit prescribed.

On the other hand, ld. DR submits that when the appellant could not come out with clear evidence that it is not authorised service provider the department's case based on allegation made in show cause notice. So also when the appellant was service provider of some branded manufacturer the appellant will not get small scale benefit.

Heard both sides and perused the records. Looking to the submissions of both sides and also materials on record, we are of the view that this small tax payer should not be called upon to make pre-deposit for hearing its appeal. We, therefore, dispense with the requirement of pre-deposit.

We have heard the appellant and Revenue in great detail. We have thoroughly examined the show cause notice to find out whether there was any evidence with the department to show that the appellant had provided repair and maintenance under any agreement or contract entered into by it with any of the manufacturer. That is not available on record. The appellant pleaded its defence in the reply to show cause notice categorically making clear that it is not an authorised service provider. No doubt it is a dealer, of certain branded goods. But merely becoming the dealer there cannot be any assumption or presumption or suspicion, however grave may be to impute the appellant to charges. Since the order is based on cogent evidence, there cannot be presumptive taxation. The appellant pleaded that appellant's submission ~~it~~ was not been controverted by any evidence available on record of Revenue. Therefore, it appears that the adjudication is being made under presumption, which shall fail to meet justice ~~of~~ under law. Considering that there is no evidence on record to show that the appellant acted under any contract or as an authorised service provider, the demand raised by adjudication order including penalty and interest are annulled. Appeal is allowed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

Anita