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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/154 /2011 - CU[DB] Date **12/10/2011**
ST/S/260/2011

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

To :
SHRI VIJAY KUMAR & CO.

AJIT NAGAR, CIRCULAR ROAD, NABHA, DISTT.
PATIALA. (PUNJAB)

SHRI VIJAY KUMAR & CO. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/542/ 2011 CU[DB]** dated 07.10.2011 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.GURDEV SINGH SANDHE
163-D, MODEL TOWN, PATIALA

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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Service Tax Stay Application No. 260 of 2011 in Appeal No. 154 of 2011

[Arising out of the Order-in-Appeal No. 162/ST/APPL/CHD-I/2010 dated 22/10/2010 passed by The Commissioner (Appeals), Central Excise, Chandigarh – I.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

Shri Vijay Kumar & Co. — Appellant

Versus

CCE, Chandigarh – II — Respondent

Appearance

Shri G.S. Sandhe, Advocate – for the appellant.

Shri Sonal Bajaj, Authorized Representative (SDR) - for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 14/09/2011.
DATE OF DECISION : 14/09/2011.

Stay order No. ST/696/11

Final Order No. ST/542/11 Dated : 7.10.11

Per. Rakesh Kumar :-

The appellant's activity is lifting of food grains from the purchase centres to the place of storage for Punjab State Grain Procurement. The department was of the view that the appellant's activity is taxable as manpower recruitment/supply agency service taxable under Section 65 (105) (k) readwith Section 65 (68) of the Finance Act, 1994. On this basis, a show cause notice dated 23/9/09 was issued to the appellant for demand of allegedly non-paid service tax amounting to Rs. 1,66,631/- alongwith interest for 2007-2008 period and also imposition of penalty on them under Section 76, 77 and 78 of the Finance Act, 1994. The show cause notice was adjudicated by the Jurisdictional Deputy Commissioner vide order-in-original dated 31/3/2010 by which the service tax demand of Rs. 1,05,754/- was confirmed against the appellant alongwith interest and beside this, while penalty of Rs. 1,000/- was imposed under Section 77, penalty of Rs. 1,05,754/- was imposed against Section 78 of the Finance Act, 1994. On appeal against the Deputy Commissioner's order, the Commissioner (Appeals) vide order-in-appeal dated 27/10/10 dismissed their appeal.

1.1 The Commissioner (Appeals) while dismissing the appeal had, however, held that from the perusal of the copies of the appellant's contract with M/s Punjab Grain Procurement, he holds that the service provided by them more appropriately falls under the category of "Cargo Handling Service" and that it does not fall under the category of manpower supply. Against this order of the Commissioner (Appeals) this appeal alongwith stay application has been filed.

2. Heard both the sides in respect of stay application. Though this matter was today listed only for hearing of stay application, in view of short point of dispute involved in this case, we are of the view that the appeal itself can be finally decided. Accordingly, this matter was taken up for final disposal with the consent of both the sides, after waiving the requirement of pre-deposit.

2.1 Shri G.S. Sandhe, Advocate, the learned Counsel for the appellant, pleaded that the Commissioner (Appeals) has held the appellant's activity to be Cargo Handling Service and this finding of the Commissioner (Appeals) has not been challenged by the Revenue, that when it has been held to be a Cargo Handling Service, since the same is for handling of agricultural produce, the same would be eligible for full exemption under Notification No. 10/2002-ST dated 1/8/02, which exempts from service tax, the taxable service provided to any person by a Cargo Handling Service in relation to agricultural produce or the goods intended to be stored in a cold storage, that since the service, in question, has been provided in relation to agricultural produce, the same is eligible for full service tax exemption under this notification, that in view of this, the impugned order upholding the service tax demand alongwith interest and imposing penalty is not sustainable.

2.2 Shri Sonal Bajaj, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and pleaded that the appellant are not eligible for the benefit of Notification No. 10/2002-ST.

3. We have carefully considered the submissions from both the sides and perused the records.

4. The Commissioner (Appeals) in the impugned order has given a clear finding that the appellant's activity does not fall under the category of manpower supply, but falls under the category of Cargo Handling Service. However, having given this finding, he has not discussed as to how service tax would still be chargeable in view of Notification No. 10/2002-ST which exempts from service tax, the taxable service provided to any person by a Cargo Handling Agency in relation to agricultural produce. There is no dispute about the fact that the service, in question, is in relation to agricultural produce – movement of food grains from purchase centres to the storage warehouses. We, therefore, hold that the appellant are eligible for benefit of exemption under Notification No. 10/2002-ST dated 1/8/2002 and in view of this, the impugned order upholding the service tax demand, interest

and penalty is not sustainable. The same is set aside. The appeal is allowed. The stay application also stands disposed of.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK