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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/92 /2011 - CU[DB]
ST/185/2011

Date **17/10/2011**

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

To :
M/S PASUPATI CASTINGS LIMITED.,

KASIMPUR ROAD, ALIGARH.

M/S PASUPATI CASTINGS LIMITED., Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/553/ 2011 CU[DB]** dated 14.10.2011

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/715/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.RAJ KUMAR, FCA
U-18, PAWAN PLACE, SAMAD ROAD,
ALIGARH

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 Stay Application No. 185 of 2011
Service Tax Appeal No. 92 of 2011

[Arising out of Order-in-Appeal No. 323-ST/LKO/2010 dated 18.10.2010 passed by the Commissioner of Central Excise (Appeals), Lucknow]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, 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? : Yes

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M/s. Pashupati Castings Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Lucknow

Appearance:

Shri Raj Kumar, Chartered Accountant for the Appellants
Shri Sunil Kumar, SDR for the Respondent

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

Date of Hearing/decision : 5.10.2011

Stay order No. ST/715/11

Final **ORAL ORDER NO. ST/553/11**

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of Service Tax of Rs. 4,34,000/- and penalties of identical amount, we proceed to deposit the appeal itself inasmuch as the short issue is involved. The applicants are discharging service tax liability as recipient of GTA services. The Notification No. 32/04-ST grants abatement to the extent of 75%, while discharging the Service Tax liability subject to certain conditions. The benefit of said notification stands denied to the appellants on the sole ground that one of the condition of the notification requiring certification by the GTA service provider to the extent that no modvat credit stands availed by him as also no benefit of notification No. 12/2003 stand availed by him, is required to be made. Inasmuch as the applicants have not produced such certificate by the transporters, the benefits stand denied to the appellants.

2. Learned representative Chartered Accountant Shri Raj Kumar appearing for the appellants draws our attention to the various decisions of the Tribunal laying down that such certificates are not required to be given on each and every consignment note. Even one consolidated certificate by the transporter would satisfy the condition of the notification. He, however, fairly agrees that even such certificate could not be produced before the lower authorities, though the same stands

procured by them now and they are now not in a position to produce the same before the adjudicating authority.

3. In view of the submissions made by the learned Chartered Accountant, we set aside the impugned order and remand the matter to the original adjudicating authority for examining and verifying the said certificates and to re-decide the matter in the light of the precedent decisions of the Tribunal.

4. Stay petition as also appeal gets disposed of in the above manner.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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