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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/650 /2010 - CU[DB] Date **20/10/2011**
ST/M/651/2011

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

To :
MAHESH AGRAWAL PARTNER
M/S. SANTOSH ENTERPRISES 6, SHASTRI NAGAR,
RATLAM (MP)

MAHESH AGRAWAL PARTNER Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/567/ **2011 CU[DB]** dated 18.10.2011 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54,
VIJAYNAGAR, INDORE(MP)

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

Service Tax Misc. NO.651 of 2011
in Service Tax Appeal No.650 of 2011

(Arising out of Order-in-Appeal No.IND-I/236/2009 dated 27.10.2009 passed by the Commissioner of Central Excise (Appeals-I), Indore)

Date of Hearing: 04.10.2011

For Approval and signature:

Hon'ble Smt. 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?	No
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?	Yes

Shri Mahesh Aggarwal, Partner,
M/s. Santosh Enterprises — Appellants

Vs

CC, Indore — Respondent

Appeared for the Appellant: Shri Manish Saharan, Advocate
Appeared for the Respondent: Shri Sunil Kumar, SDR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Misc Order No.ST/182/11

Final ORDER No.ST/567/11..Dated:4.10.2011

Per Archana Wadhwa:

Though the present miscellaneous application is for extension of the Stay Order No.ST/87/11 dated 11.02.11 vide which unconditional stay was granted to the appellant, we proceed to decide the appeal itself, with the consent of both the sides, inasmuch as a short issue is involved.

2. The appellants are contractors registered with the Indian Railways and as per works order, they supplied the goods required by them. In some cases, they do work of installation, commissioning and erection of certain items. By the show cause notice in this matter, the applicants were asked to pay service tax on total amount received less abatement, therefore, the demands were confirmed.

3. The Advocate for the applicants submits that the applicants are traders and they are supplying the goods required by the Indian Railways as per their works order. In some cases, they were asked to do the work of installation, commissioning and erection of certain items for which they are being paid separately in lump sum. That amount is indicated separately in the works order. Hence, the applicants are entitled for the benefit of Notification No.12/03-ST dated 20.06.2003. Hence, these demands are not sustainable as total

amount received on account of installation, commissioning and erection is within exemption limit.

4. After hearing ld. SDR, we find that the appellants are not agitating their duty liability in respect of installation, commissioning and erection work, wherever done by them. Their only contention is that the lower authorities have taken into account the entire consideration received by them from the Railways whereas the fact is that only a part of consideration was towards installation, commissioning and erection work and the other consideration received by them from the Railways was in respect of the independent goods supplied by them to the Railways, in the capacity of a trader.

5. As such ld. Advocate submits that it is only the activities falling under the category of installation, commissioning and erection, which has to be taken into account for the purposes of the service tax. It is their contention that if that is done, they would be entitled to small scale exemption benefit.

6. We find that the dispute relates to the factual verification of the figures of sale of the goods by the appellants in the capacity of a traders and the activities relating to installation, commissioning and erection. The said factual verification can be done only at the level of original adjudicating authority, for which purposes, we set aside the impugned order and remand the matter to the original adjudicating

authority for examining the above claim of the appellant and to decide their tax liability in accordance with law. The Misc. application as also the appeal get disposed of in the above manner.

(ARCHANA WADHWA)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.