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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/1601/2010 - CU[DB]
ST/S/3399/2011

Date **20/07/2011**

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

To :
M/S DARPAN ADVERTISERS
NEAR PRAKASHAN KENDRA, OPPOSITE KABIR
MANDIR, SITAPUR ROAD, LUCKNOW.

M/S DARPAN ADVERTISERS — Appellant

Vs

C.C.E. LUCKNOW — Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/298/ 2011 CU|DB|** dated 19.07.2011 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/445/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

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

2. Adv. / Consult : Mr Dharmendra Kumar, CA
11B Rajshee Apartment
Dalibagh, Lucknow (UP)

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. 2, R.K. Puram, NEW DELHI

COURT No. II
ST/ROM No.3399 of 2010 in
Service Tax Appeal No.1601 of 2010

Date of hearing/decision: 1st July, 2011

Darpan Advertisers — Appellant

Versus

CCE, Lucknow — Respondent

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

Appearance :
Shri Dharmendra, C.A. – for the Appellant.
Shri Sumit Kumar, SDR - for the Respondent.

Stay order No.ST/445/11
Final **ORDER NO.** ST/298/11 **DATED** 19-7-11

Per D.N. Panda

This Stay Application is against the demand arising ~~out~~ of dismissal of appeal by first appellate authority for non-payment of the tax demand made in adjudication for hearing the first appeal before him. Ld. DR appearing on behalf of the appellant argues that although section 35F of the Central Excise Act, 1944 is made applicable to service tax law, the word "service" not appearing in that section, the appellant was of the belief that no Stay Application was required to be filed before first appellate authority. Consequently appeal was dismissed for non-payment of the demand that arose in adjudication.

2. On the other hand, Shri Sumit Kumar, Ld. DR submits that no doubt section 35F has been adopted for governance of service tax law in so far as may be in relation to service tax as they apply in relation to the duty levied. By virtue of provision contained in Finance Act, 1944, right of appeal is conditional, Therefore, this appeal does not deserve any consideration by Tribunal nor the Stay Application arising out of that appeal survives for disposal when there was no pre-deposit done at the first appellate stage.

2. Heard both sides and perused the records.

3. The averment of the Ld. ~~DR~~ Counsel shows that appellant was under mis-conception of law for which it could not make Stay Application before first appellate authority. However, justice does not ~~require~~ allow appellant's merited appeal if any, to be converted into a demeritorious appeal for misconception of law. Therefore, if the appellant so choses to file a Stay Application before first appellate authority, it may do so for consideration by first appellate authority. On filing such application, the authority shall dispose the same on its own merit granting fair opportunity for hearing.

4. Having noticed that practical difficulties having been faced by the appellant who should not be deprived of process of justice, we dispose the Stay Application as well as appeal remanding the matter back to the Ld. First appellate authority for appropriate order. It may be stated that the appellant shall file Stay Application before first appellate authority within one month from today and make a prayer for disposal of the same soon after filing without waiting notice from him. The appellant should not fail to cause appearance in person or through

authorised representative on the date fixed by first appellate authority for hearing its matter in the above terms.

5. In the result both Stay Application and appeal are disposed off.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK-I