15

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/1679/2010-1680/2010 - CU[DB]
ST/3601-02/2010

Date **20/07/2011**

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

To :
M/S SHIV DARSHAN S/O LATE AMAR NATH,
R/O HOUSE NO. 2644, OLD, ANAJ MANDI, RAJPURA,
DISTT. PATIALA (PUNJAB)

M/S SHIV DARSHAN S/O LATE AMAR NATH, Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/299-300 2011 CU[DB]** dated 08.07.2011 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/446-447/2011

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.G.S SANDHE
163/D, MODEL TOWN, PATIYALA

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
14. M/S SHIV DARSHAN S/O LATE AMAR NATH,
R/O HOUSE NO. 2644, OLD, ANAJ MANDI, RAJPURA,
DISTT. PATIALA (PUNJAB)

Assistant Registrar
(Customs Appeal Branc

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
<u>ST Application No.3601-3602/10 in</u>
<u>Service Tax Appeal No. 1679-1680 of 2010 (DB)</u>

(Arising out of the Order-in-Appeal No.150-151/APPL/CHD-I/2010, dated 28.09.10 passed by the Commissioner of Central Excise, Chandigarh-I)

For approval and signature of:
SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE TECHNICAL MEMBER

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 should 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 Departmental Authorities ? :

Shiv Darshan — Appellant
Versus
CCE, Chandigarh — Respondent

<u>Appearance</u>
Shri G.S.Sandhu, Advocate - for the appellant.
Shri B.L.Soni, SDR – for the respondent.

CORAM : **Hon'ble Shri S.S.Kang, Vice President**
Hon'ble Shri Mathew John, Member (Technical)

<u>DATE OF HEARING / DEICISION : 08/07/2011.</u>

Final Order No. ST/299-300/11 Dated : 8.7.11

Per S.S.Kang: S.O. No. ST/446-447/11

Heard both sides. Applicant filed these applications for waiver of pre-deposit of amount of service tax and penalties.

2. Show Cause Notices were issued to the applicants demanding the service tax on the ground that applicant are providing manpower recruitment and supply service. The applicant filed reply to the Show Cause Notice and adjudicating authority confirmed the demand and amounts of

penalties by treating the applicant as provider of recruitment of manpower and supply service.

3. The applicants filed appeals and the Commissioner(Appeals) vide common impugned order accepted the contention of the applicants that they are not provider of manpower recruitment or supply agency services. The Commissioner(Appeals) further dismissed the appeals on the ground that they are actually provider of cargo handling service.

4. The contention of applicants is that the impugned order is beyond the scope of ~~cargo handling service as under~~ Show Cause Notice as there is no allegation that applicant is providing cargo handling service. Applicant entered into a contract in respect of labour/cartage of shifting of foodgrains ~~of~~ in different purchase centres of Punjab on the rates specified. In case applicants are held as provider of cargo handling service, the same has been exempted vide Notification No.10/2002-ST, dated 01.08.02 as the applicants are providing cargo handling service in relation to agriculture.

5. Revenue reiterated the findings of the lower authority and say that as per the contract, applicant are loading/unloading the foodgrains and rightly held to be provider of cargo handling service.

6. We find that as per Show Cause Notice, there is no ground for demanding service tax as provider of cargo handling service as held by Commissioner (Appeals). Further, we find that cargo handling service is exempted in relation to agriculture service vide Notification No.10/2002-ST, dt. 1.8.02.

7. Even if we agree with the findings of the Commissioner(Appeals) that applicant provided cargo handling service then also service provided by the applicant is exempted under the above Notification.

8. In view of this, impugned orders are set aside. Stay petition as well appeals are allowed.

(Order dictated in the open court.)

(S.S.Kang)
Vice President)

(Mathew John)
Member (Technical)

RK-I