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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. **ST/1713/2010 – SM [BR]** Date **15/06/2011**

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S RADHEYSHYAM NAGUJI Respondent

I am directed to transmit herewith a certified copy of **Final order No. 318 / 2011-SM[BR]** dated 9.6.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S RADHEYSHYAM NAGUJI
VIDYA NAGAR, NEAR TAS
CHEMICAL, NAGDA, DISTT.
UJJAIN(M.P)

2. Adv. / Consult
NONE:------------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
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 -
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 (Harvana)
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
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.III

Service Tax Appeal No.ST/1713/2010

(Arsing out of Order-in-Appeal No.IND/260/2010 dated 9/14.09.2010 passed by the CCE (A), Indore)

For approval and signature:

Hon'ble Mr.M.Veeraiyan, 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?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

CCE, Indore — Appellants

Vs.

M/s.Radheyshyam Naguji — Respondent

Present for the Appellant: Shri S.K.Bhaskar, SDR
Present for the Respondent: None

Coram:
Hon'ble Mr. M.Veeraiyan, Member (Technical)

Date of Hearing: 09.06.2011
Date of Decision: 09.06.2011

Final **ORDER NO.** 318/2011 SM (BR)

PER: M.VEERAIYAN

This is an appeal by the department against the order of the Commissioner (Appeals) No.IND/260/2010 dated 9/14.09.2010 by which the order of the original authority No.12/AC/ST/08-09 dated

17.11.2008 confirming the demand of service tax alongwith interest and imposition of penalty was set aside.

2. None appears for the respondents in spite of notice. On earlier occasion also i.e. 6.4.2011, none appeared for the respondents, in spite of notice.

3. Heard learned SDR.

4. Learned SDR submits that the show cause notice dated 16/28.3.07 was issued demanding service tax and proposing penalty. The respondent-assessee did not file any reply. They also did not appear for personal hearing fixed on 24.09.08 and 25.09.08 and hence an ex-parte order was passed. The order dated 17.11.08 was sent by the registered post acknowledgement due. As they came to know that the respondent-assessee has left the premises, vide panchnama dated 27.1.09, the order was pasted on the walls of the house which was the last known address. However, the respondent-assessee sought for copy of the order vide letter dated 25.2.10 which was furnished to them on 3.3.10. The Commissioner (Appeals) has heard the appeal filed by the respondent-assessee taking the date of service, of the order-in-original as 3.3.10. The appeal has been filed before the Commissioner (Appeals) beyond stipulated period and also beyond the period for which the Commissioner (Appeals) has power to condone the delay. Therefore the Commissioner (Appeals) should have rejected the appeal as barred by limitation as settled by the Hon'ble Supreme Court in the

case of Singh Enterprises vs. CCE, Jamshedpur reported in 2008 (221) ELT 163 (SC).

5. I have carefully considered the submissions of the learned SDR and perused the records. The order in original has been passed ex-parte i.e. without receipt of reply from the respondent-assessee and without respondent-assessee appearing for personal hearing. The Commissioner (Appeals) has passed the order against the department without hearing the representative of the department. However, before the Commissioner (Appeals), respondent-assessee was duly represented.

6. Surprisingly, the respondent-assessee is not represented before the Tribunal also in spite of notice. The address of the respondent as given in the show cause notice, order in original and order of Commissioner (Appeals) are the same. The submission of the SDR that the order-in-original has been duly served on 27.1.2009 was not brought to the notice of the Commissioner (Appeals) so as to verify the authenticity of the claim. The Commissioner (Appeals) has chosen to pass the order against the department without granting an opportunity of hearing to the representative of the department. It also appears that the Commissioner (Appeals) has not called for any records regarding date of service of the order of original authority on the respondent-assessee. If claim of the department that the order has been served on 27.1.09 itself is true then the Commissioner (Appeals) should

have dismissed the appeal as time barred as settled by the Hon'ble Supreme Court in the case of Singh Enterprises cited supra.

7. As the submissions and evidence sought to be produced by the department were not before the Commissioner (Appeals), I deem it appropriate to set aside the order of the Commissioner (Appeals) and remand the matter back to him for fresh consideration. The department is permitted to produce evidence relied upon relating to service of order in original on the respondent-assessee within thirty days from the receipt of this order. He shall grant a reasonable opportunity of hearing to both sides before deciding the matter.

8. The appeal is allowed by way of remand as above.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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