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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/1814-15/2010 - CU[DB] Date **24/08/2011**
ST/S/3857-58/10

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

To :
M/S TECHNO TRADERS,

24 VISHVESHWAR NAGAR, ALAMBAGH, LUCKNOW.

M/S TECHNO TRADERS, Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/369-70 2011 CU[DB]** dated 18.08.2011 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/536-37/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

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

2. Adv. / Consult
MR.KAPIL VAISH
B-51, BUTLER PLAZA, 95,
CIVIL LINES, BAREILLY.

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 (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
14. M/s Sharp metal Industries
31-B Shabad Colony
Mahanagar.
Lucknow - (U P)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

ST/Stay/3857/2010 in Appeal No.ST/1814/2010
ST/Stay/3858/2010 in Appeal No.ST/1815/2010

(Arising out of Order-in-Appeal 152-153-ST/LKO/2010 and 154-ST/LKO/2010 dt.27.7.10 passed by the Commissioner of Customs, & Central Excise (A), Lucknow)

Date of Hearing/Decision: 12.08.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, 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 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

M/s.Techno Traders Appellant
M/s.Sharp Metal Industries

Vs.

CCE, Lucknow Respondent

Present for the Appellant: Shri Kapil Vaish, CA
Present for the Respondent: Shri Sonal Bajaj, SDR

Coram: Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Stay order No ST/536-537/11
Final **ORDER NO.** ST/369-370/11

PER: ARCHANA WADHAWA

After hearing both sides, we find that the Commissioner (Appeals) has dismissed the appeal for non compliance with the stay order dated 31.05.2010 passed by the appellate authority directing the applicants/appellants to deposit 25% of the entire amount of service tax confirmed and penalty imposed vide adjudication order.

2. It is seen that the stay orders were passed by the Commissioner (Appeals) without hearing the applicants/appellants in person. After passing of the stay orders, the applicants moved a modification application with a request to review the stay order. After hearing them in person, the Commissioner (Appeals) vide his order has rejected the modification application as also the appeal for non compliance. Hence, the present appeals.

3. After hearing the appellants on merits as also on the financial condition, we find that the service tax of Rs.21,93,683/- stands confirmed and penalty of equivalent amount against the applicants on the ground that during the period from 1.7.2003 to 31.3.2007, they have provided the services of erection, installation and commissioning to M/s.BSNL and have not paid any service tax on the same. As per the appellants, the services provided by them were civil works i.e. preparation of base, digging/constructing foundation for erection of towers and no services of erection, installation and commissioning were involved. The demand also stands agitated on the point of time bar inasmuch as the show cause notice for the relevant period was issued on 28.4.2008. The appellants have also contended that the directions of deposit 25% of the entire amount of service tax confirmed and penalty were ~~to~~ too harsh inasmuch as they have a good case in their favour and in view of the poor financial condition, the same should be modified.

4. After hearing learned SDR and taking into consideration the overall facts and circumstances of the case, including the aspect of time bar and poor financial condition of the appellants, we direct the applicants/appellants to deposit 15% of service tax within eight weeks and report compliance to the Commissioner (Appeals). The Commissioner (Appeals) after ascertaining the compliance ~~on~~ with the above order shall decide the appeals on merits.

5. The stay petitions alongwith appeals get disposed of in the above manner.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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