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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/182 /2011 - CU[DB]
ST/S/838/11

Date 16/12/2011

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

To :
M/S CORPO CARE,
177, SHREE GOPAL NAGAR, GOPALPURA, BYE PASS,
JAIPUR (RAJ.)

M/S CORPO CARE, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/643/ **2011 CU[DB]** dated 09.12.11 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/838/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.BIPIN GARG, ADV
B-1/1289-A VASANT KUNJ NEW DELHI

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:05.12.2011
Date of decision:05.12.2011

Service Tax Stay Application No.363 of 2011 &
In Appeal No.182 of 2011

[Arising out of Order-in-Appeal No.368(DKV)ST/JPR-I/2010 dated 8.11.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur].

M/s. Corpo Care Appellant

Vs.

CCE, Jaipur Respondent

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 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

Appearance: Rep. by Ms. Sukriti Das, Advocate for the appellant.
Rep. by Shri R.K. Verma, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. S.T./..643/11../Dated: 05.12.2011
Stay order No. ST/838/11

Per Archana Wadhwa:

The prayer is to dispense with the condition of pre-deposit of service tax demand of Rs.95,599/ and penalty of identical amount, which stands confirmed against the applicant, who is the C & F Agent, by denying the abatement on account of re-imbursable expenses.

2. Ld. Advocate, Ms. Sukriti Das appearing for the appellant fairly agrees that the issue stands decided against them by the Larger Bench of the Tribunal in the case of Sri Bhagavathy Traders Vs. CCE, Cochin reported in 2011 (33) STT 1/13 taxmann.com 83 (Bangalore-CESTAT)(LB). However, she further submits that show cause notice stands issued on 6.9.2005 for the period 2001-2005. Inasmuch as the issue was decided subsequently by the Larger Bench's judgement on 8.08.2011 and as the earlier orders were in favour of the assesses, no melafide can be attributed to the appellant so as to invoke period of limitation.

3. Ld. DR appearing for the Revenue submits that they were not disclosing the fact of non-payment of duty on the re-imbursable charges in

which case, it has to be held that they suppressed the value of the services. Accordingly, he submits that longer period stands rightly invoked by the lower authorities

4. After appreciating the submissions made by both the sides, we find that the law stands declared on merits by the Larger Bench of the Tribunal referred supra.

5. As regards limitation, we agree with the ld. Advocate that during the relevant period, the law was not clear. In fact, such reimbursable expenses were not being ~~recovered~~ added in the value of C& F Agent commission. The earlier decisions of the Tribunal were in favour of the assessee. One such reference can be made to the Tribunal's decision in the case of Reliance Industries Ltd. Reported in 2008 (12) STR 345 (Tribunal-Ahmd.). The said decision stands confirmed by the Hon'ble Supreme Court when the appeal filed by the Commissioner was rejected as reported in 2011 (23) STR J-226 (SC). As such, it can be safely concluded that the appellant was under a bonafide belief that during the relevant period for not including the reimbursable expenses in the assessable value of the services. We accordingly hold that the extended period was not available to the Revenue. For the similar reasons, no penalty can be imposed on the applicant/appellant.

6. Having decided on the point of limitation and penalty, we deem it fit to set aside the impugned order and remand the matter to the original adjudicating authority for quantification of the demand within the limitation period. The stay petition as also the appeal get disposed of in the above manner.

[order dictated & pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.