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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/94 /2011 - CU[DB]
ST/S/187/11

Date **16/12/2011**

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

To :
M/S HARNAM DASS & CO.
VILLAGE KUKKAR SUHA, TEH. BALACHAUR,
DISTT. NAWANSHAHR, PUNJAB.

M/S HARNAM DASS & CO. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/645/ 2011 CU[DB]** dated 13.12.2011 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/845/11

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.DSK LEGAL, ATTORNEY & SOLICITORS
21 UGF,ANTARIKSH BHAWAN,KASTURBA GANDHI MARG, N 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT-II

ST/Stay/187/2011 in
Service Tax appeal No. 94/2011

Date of hearing/decision: 23rd November, 2011

M/s. Harnam Dass & Company — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance:

Shri Rupinder Singh, Advocate for the appellant;
Shri K.K. Jaiswal, DR for the respondent

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Rakesh Kumar, Technical Member

Final **ORDER NO.** ST/645/11 **DATED** 13.12.11
Stay order No. ST/845/11

Per D.N. Panda:

This matter was heard on 21st November, 2011 but in absence of Annexure to the work order it was adjourned for hearing for today.

2. Learned Counsel submits that scope of work was to move goods from railway sliding within the factory premises to the place of storage within the same premises. Once this is the scope of work, following the decision of the Tribunal in the case of CCE, Ranchi vs. Modi Construction Company – 2011 (23) STR 6 (Jhar.) and also the decision in the case of CCE, Jaipur vs. Kumar Engg. & Contractors – 2010 (18)

S.T.R. 448 (Tri. - Del.), the appellant shall not be liable to pay service tax as "Cargo Handling Agent". His alternative submission is that if the case is held to be "Manpower supply" that is not possible because that entry was not in the statute book at the material time. He further submits that this appellant is paying service tax as "Manpower supply Agency" after the entry was incorporated in the statute book. On this count his prayer is to waive requirement of pre-deposit for hearing of the appeal.

3. Learned D.R. on the other hand support the order of the authorities below.

4. Heard both sides and perused the record.

5. The impugned order nowhere discloses about the scope of work embodied in the work order. The authority tried to make effort in para 10 of the order but has also not demonstrated the case of the Revenue with sound reason. When the authority passed the order on 16.10.2010 by that time, decision of the Tribunal in the aforesaid two cases were available before him. But he has not at all looked into those decisions.

6. Prima facie, we are satisfied that balance of convenience is in favour of the assessee. However, the matter requires examination on the basis of the contract. Therefore, dispensing with requirement of pre-deposit we remand the matter to the Adjudicating Authority to grant fair opportunity of hearing to the appellant and considering all

shall

averments as well as point of law, if any, raised pass a reasoned and speaking order. We expect that the authority shall examine scope of work on the basis of law and pleadings of the appellants thread bare.

7. In the result, both stay application and appeal are disposed in the above terms.

(Dictated & pronounced in Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK