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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/461-63 /2011 - CU[DB]
ST/S/887-89/11

Date **23/12/2011**

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

To :
MRS. JASPREET KAUR, C/o Sh. Gagandeep Singh.
HOUSE NO. 988L,
SECTOR-21, PANCHKULA. (HARYANA)

MRS. JASPREET KAUR, Appellant

Vs

C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/654-656/ 2011 CU[DB]** dated 20.12.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**
Along with Stay order No ST/872-874/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult

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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Stay Application No.887-888-889 of 2011
Service Tax Appeal No.461-462-463 of 2011

Date of Hearing / Decision : 07.12.2011.

[Arising out of Order-In-Appeal No.754/ST/D-II/10, dated 09.12.2010 issued by CCE, New Delhi-II]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, 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?	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

Mrs. Jaspreet Kaur & Mr. Gagandeep Singh — Appellants

Versus

CCE, Delhi — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Present for the Appellant - None.
Present for Respondent - Shri K.K.Jaiswal, DR

Stay order No. ST/872-874/11

Final **Order No.** ST/654-656/11 **Dated :** 20/12/11

Per Ms. Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty and penalty, we proceed to decide the appeal itself in as much as the issue lies in a narrow compass. The appellant is a distributor of various garment items, washing products etc. being manufactured by one M/s Fashion Suitings Pvt. Ltd. The service tax stands confirmed against them under the category of 'Business Auxiliary Services'.

2. Apart from the contesting the demand on merit as also on limitation, it is seen that appellant took a stand before the lower authority for grant of small scale exemption in terms of Notification No.6/2005. The said benefit stands denied by the lower authorities on the ground that they are providing the services under the brand name of Fashion Suitings Pvt. Ltd. It is the contention of the ld. Advocate that Fashion Suitings Pvt. Ltd. is the manufacturer of the goods and the brand name is only in respect of the goods. Providing of services to a brand name owner by itself cannot disentitle the assessee from the benefit of the Notification. For the above proposition, ld. Advocate relies upon the Tribunal's decision in the case of Peoples Automobiles Ltd., Final Order No.ST/473-474/2011, dtd. 18.08.11.

3. Without expressing any opinion on the merits or on limitation, we find that the issue of availability of exemption of Notification stands discussed by the Tribunal in the above referred judgement. For better appreciation, we reproduce para 6 of the said decision :-

> '6. *We note that the First Proviso to the Notification is to the effect that nothing contained in the notification shall apply to taxable services provided by a person under a brand name or trade name whether registered or not of another person. The said Proviso hits the taxable services, when not being provided by a person under his own name, but are being provided by him under the brand name or trade name of another person. The*

lower authority's reasoning that such services being provided by the appellant to the banks are by using their brand name. We do not find any merits in the above contentions of the Revenue. Admittedly, the services are being provided by the appellant to the banks or other non-banking financial institutions. Such services are being provided under their own name. The banks are only the recipients of the said services. It cannot be said that the services are being provided to the banks as recipient of the services by using the recipient's brand name. The notification does not put restriction with reference to the brand name of the service recipient but the same debars the benefit to the service provider, if the brand name or trade name of another person is being used as service provider. As such, we hold that the appellants are entitled to the benefit of Notification No.6/2005-CE. On this ground, we set aside the confirmation of the demand of duty against them and remand the matter for re-adjudicating liability for each financial year based on our rulings above.'

4. In view of the above, we set aside the impugned order and remand the matter to the original adjudicating authority for deciding the issue of applicability of small scale notification, afresh in the light of the observations made by the Tribunal in the above referred decision. The appellants are free to contest the demand on the other issues of merit and limitation. Stay petition as also appeal gets disposed of in above manner.

(Dictated and pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Rakesh Kumar)
Technical Member

RK-I