14

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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/685 /2011 - CU[DB] Date **03/01/2012**
ST/S/1333/11

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

To :
M/S ANNIK TECHNOLOGY SERVICES PRIVATE
LIMITED,
515, UDYOG VIHAR, PHASE-III, GURGAON
(HARYANA)
122001

M/S ANNIK TECHNOLOGY SERVICES PRIVATE LIMITED, Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/662/ 2011 CU[DB]** dated 23.12.11 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/891/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.LUTHRA & LUTHRA LAW OFFICE
103, ASHOKA ESTATE, BARAKHAMBA ROAD, 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)

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

Date of Hearing:14.12.2011
Date of decision:14.12.2011

Service Tax Stay No.1333 of 2011-Cus
In Appeal No.685 of 2011

[Arising out of Order-in-Appeal No.345/BK/GGN/2010 dated 26.08.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon].

M/s.Annik Technology Services Private Limited — Appellant

Vs.

CST, Delhi — Respondent

For approval and signature:

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

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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

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Appearance: Rep. by Shri J.P. Singh, Advocate and Shri Ankus Jain, Advocate for the appellant.
Rep. by Shri R.K. Gupta, DR for the respondent.

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

Final Order No. S.T./662/11.../Dated:14.12.2011
Stay order No. ST/891/11

Per Archana Wadhwa:

Ld. DR appearing for the Revenue raises an objection to the present appeal submitting that the impugned order-in-appeal was passed on 26.08.2010 and the appeal stands filed on 21.04.11 i.e. beyond the normal period of limitation of three months. Inasmuch as the there is no COD application, he prays for rejecting the appeal on the point of time bar.

2. Ld. Advocate appearing for the appellant draws our attention to the affidavit filed by the Vice President (Finance) of the appellant indicating that the date of receipt shown as 28.01.2011 in the ST-5 form is the correct date of receipt of the order. Inasmuch as, there is nothing contrary on the record, we accept such declaration of the date of receipt and proceed to decide the matter.

3. The prayer in the application is to dispense with the condition of pre-deposit of Rs.6,69,776/-. The Commissioner (Apepals) vide his impugned order has reversed the order of the Original Adjducating Authority vide which refund of service tax paid on the services utilized for export of the services and lying un-utilised in the Cenvat credit Account was granted. The Appellate Authority has held that the said services were not used in the export of the services and as such, refund is not permissible.

4. Arguing on the above issue, ld. Advocate submits that the Appellate Authority failed to take note of the subsequent retrospective amendment in the law vide which the expression "used in" was substituted with "used for". He also submits that for the subsequent period, the Commissioner (Appeals) while taking note of the above amendment, has held in favour of the appellant vide his order-in-appeal dated 31.03.11.

5. In view of the above, we dispense with the condition of pre-deposit of dues and proceed to decide the appeal itself with the consent of both the sides.

6. In view of the subsequent order of the Commissioner (Appeals) held in favour of the appellant, we would like to set aside the impugned order and remand the matter to the Commissioner (Appeals) for de novo decision in the light of his subsequent order. The stay petition as also appeal gets disposed of in the above manner.

[order dictated & pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.