14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/633 /2011 - CU[DB] Date **03/01/2012**
ST/S/1234/11, ST/COD/144/11

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

To :
M/S CHOKHI DHANI,
9TH MILESTONE, KHANDWA ROAD, DATODA
PHATA, INDORE (M.P.)
452020

M/S CHOKHI DHANI, Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/669/ 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/905/11 & Misc Order No ST/239/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAKESH CHITKARA,ADVOCATE
181-A,POCKET-B,MAYUR VIHAR-2, PHASE-2,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, COURT NO. III

COD Application No.144 of 2011
Stay Application No. 1234 of 2011
Service Tax Appeal No. 633 of 2011

[Arising out of Order-In-Appeal No.Ind/394/2010, dated 25.11.2010 issued by CCE, Indore]

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

M/s. Chokhi Dhani — Appellants

Vs.

Commissioner of Central Excise
Indore — Respondent

Appearance:
Shri B.L.Narsimhan, Advocate for the Appellants
Shri B.L.Soni, DR for the Respondent

Date of Hearing/decision : 13.12.2011

Stay order No ST/905/11

FINAL ORAL ORDER NO ST/669 /2011

Per Ms. Archana Wadhwa:

After dispensing with the condition of pre-deposit, we proceed to decide the appeal itself with the consent of both sides.

2. The short issue involved in the present appeal is as to whether the value of food items provided to the customers to whom Mandap Keepers Services were being provided is required to

be excluded from the value or not. It is seen that the appellant's claim the benefit of Notification No.12/03-ST, which stands denied by the lower authorities.

3. Both sides agree that an identical issue was considered by the Tribunal in the case of Sayaji Hotels reported in 2011(24)STR177(Tri.-Del.), laying down that the benefit of Notification No.12/03-ST is not available. However, the Tribunal held that another Notification No.21/97-ST and No.1/06-ST providing abatement to the extent of 40% would be available. Ld. Advocate fairly agrees that the benefit of said Notification was not claimed before the adjudicating authority and as such he had no occasion to deal with the same. Ld. DR submits that the appellant has already availed the benefit of said Notification prior to 06.09.07. However, ld. Advocate submits that the above finding of the Commissioner is factually incorrect.

4. Ld. Advocate also submits that in the same very judgement in the case of Sayaji Hotels, the Tribunal has held that the demand is be barred by limitation on the ground that the availment of benefit of Notification No.12/03-ST was being reflected in the ST-3 returns. He submits that appellant has also been claiming the benefit of the Notification by mentioning the same in ST-3 returns. As such by adopting the same criteria, he submits that the demand is liable to be held barred by limitation except for the period which falls within the limitation. Ld. DR ~~on going by~~ submits on the above issue, as per the observations of Commissioner(Appeals), that the appellant have not provided entire details in the ST-3 returns which justifies invocation of limitation.

5. After carefully considering the submissions made by both sides, we find that the issue on merit as also on limitation stands decided in the above referred judgement of Tribunal in the case of Sayaji Hotels. The applicability of the same to the facts of the present case is required to be examined by the original adjudicating authority for which purpose we set aside the impugned order and remand the matter for re-decision in the light of the law declared in the case of Sayaji Hotels. Stay petition as also appeal gets disposed of in above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

RK-I

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

PRINCIPAL BENCH, COURT NO. III

COD Application No.144 of 2011
Stay Application No. 1234 of 2011
Service Tax Appeal No. 633 of 2011

M/s. Chokhi Dhani — Appellants
Vs.
Commissioner of Central Excise
Indore — Respondent

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

Appearance:
Shri B.L.Narsimhan, Advocate for the Appellants
Shri B.L.Soni, DR for the Respondent

Date of Hearing/decision : 13.12.2011

Misc **~~STAY~~ ORAL ORDER NO ST/239 /2011**

Per Ms. Archana Wadhwa:

The prayer in the application is to condone the delay in filing the appeal for 26 days which stands attributed to the sickness of mother-in-law of the advocate whom the appeal papers were handed over for drafting of appeal and filing of same. It stands disclosed before us that subsequently advocate's mother-in-law expired.

2. In view of the above, we condone the delay and allow the appeal.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

RK-I