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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/588 /2011 - CU[DB]
ST/S/1149/11

Date **03/01/2012**

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

To :
M/S HYB HINDUSTAN LTD.,
D-20, OKHLA INDUSTRIAL AREA, PHASE-I, NEW
DLHI.

M/S HYB HINDUSTAN LTD., Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/671/ 2011 CU|DB|** dated 21.12.11 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/919/11

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.V.LAKSHMI KUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Service Tax Stay Appn. No.ST/S/1149/2011 in
Service Tax Appeal No.ST/588/2011

[Arising out of Order-in-Appeal No.16/S.Tax/D-II/2011 dated 13.01.2011 passed by the Commissioner (Appeals), Service Tax Commissionerate, Delhi].

M/s. HYBO Hindustan Ltd. ...Appellant

Vs.

CST, Delhi ... Respondent

Present for the Appellant :Shri. B.L. Narasimhan, Advocate
Present for the Respondent:ShriB.L. Soni, SDR

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

Date of Hearing/Decision: 12.12.2011

Stay order No. ST/919/11
Final **ORDER NO.** ST/671/11 **DATED:** 21.12.11

PER: D.N.PANDA

Shri Narasimhan, ld. Counsel states that for the impugned period the definition of franchisee what that is depicted at page 18 of the appeal memo if examined in relevance to the terms of the agreement at page 87 and most particularly with page 19 that shall throw light about the activity of the appellant. The real activity of the appellant was pleaded before the adjudicating authority as is indicated under para 9 at page 134 of the appeal folder. The authorities without examining the elements of the franchisee levied service tax demand of Rs.24,86,880/- followed by penalty of equal amount under section 78 and levy of interest was made.

2. Ld. DR on the other hand, supports the order of the authority below.

3. Heard both sides and perused the record. We have looked into the first appellate order which does not show light how the facts of the appellant was examined, when there is a pleading at page 134 about methodology of working of the franchisee agreement. No independent examination has been made by Appellate Authority to the factual aspect of the case. Therefore, without wasting time of the Tribunal, waiving requirement of pre-deposit, we send back the matter to the ld. Adjudicating Authority to thoroughly examine factual evidence with different clauses of agreement with the modus operandi and the activities carried out and the law ~~laid down~~ enacted in Finance Act 1994 to resolve the controversy raised through show cause notice. Shri Narasimhan also points out that the adjudication suffers from limitation. Since we have proposed to remand the adjudication, all the legal pleadings are open to the appellant to raise before adjudicating authority.

4. In the result, the stay application is disposed and appeal is remanded.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita