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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/701 /2007-702 /2007,765 /2007-766 /2007 - CU[DB]   Date **04/01/2012**

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

To :
M/S ESS KAY ASSOCIATES

SCO-10, SECTOR 26, BASEMENT, CHANDIGARH

M/S ESS KAY ASSOCIATES Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/676-79 2011 CU[DB]** dated 22.12.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

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.BALBIR SINGH
MASTAN & CO,C-5/9,SAFDARJUNG ENCLAVE,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)

P.T.O.

M/S KAY ESS ASSOCIATES
SCO NO 10-(BASEMENT), SECTOR-26, CHANDIGARH

M/S SUMIT & CO.
SCO NO 10-(BASEMENT), SECTOR-26, CHANDIGARH

M/S SUMIT & CO.
SCO-10, SECTOR 26, BASEMENT, CHANDIGARH

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Service Tax Appeal Nos.ST/765-766 /2007

M/s. Kay Ess Associates
M/s.Sumit & Co. ...Appellants

Vs.

Commissioner of Central Excise, Chandigarh ... Respondents

Service Tax Appeal Nos.ST/701-702/2007

Commissioner of Central Excise, Chandigarh ...Appellants

M/s.Sumit & Co.
M/s. Kay Ess Associates ... Respondents

Vs.

Present for the Appellant : Shri Rupinder Singh, Advocate
Present for the Respondent : Shri K.P. Singh, D.R.

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER

Date of decision/Hearing: 28.11.2011

Final **ORDER NO.** ST/676-679/11 **DATED:** 22.12.11

PER: D.N.PANDA

Service Tax Appeal No.ST/765-766/2007

Ld. Counsel submits that ~~there~~ the Appellants were pure agents in some cases and there may be a case of reimbursement of expenses in some cases. Entire transaction calls for examination of various documents on the basis of law. If all such documents are examined appropriate liability shall be determined under law.

2. Ld. DR presses for all documents to be submitted.

3. Heard both sides and perused record.

4. We find that the litigation is of multiplicity in nature in view of various documents involved for examination. If the authority examines all the contracts individually in accordance with law, liability can be determined appropriately under Finance Act 1994. To resolve dispute of both sides, the appellant is directed to produce all the contract copies/ work orders/ agreements before the adjudicating authority within one month of receipt of this order and make application for fixation of date of hearing. If such an application is made, the authority shall fix the date of hearing and granting fair opportunity of hearing, shall pass appropriate order.

5. In the result, the impugned order is set aside and the matter is remanded to the adjudicating authority for redoing the adjudication. Thus, appeal No.765 & 766 of 2007 are disposed in above terms.

ST/701-702/2007

7. Revenue has come in appeal against the relief granted by ld. Commissioner (Appeals) on transport charges, freight charges, godown rent and salary of Clerk while waiving the penalties. We do appreciate that ld. Appellate Authority has no advantage of reading Larger Bench Decision in the case of M/s. Shri Bhagavathy Traders vs. Commissioner of Central Excise, Cochin reported in 2011-TIOL-1155-CESTAT-Bamg-LB Therefore, the appellant shall not face penal consequence without testing the governing facts in the light of law declared by Larger Bench. While de-novo adjudication is done, the question of reimbursement etc. shall be looked into in the light of Larger Bench decision as well as statutory provision in Finance Act 1994. Since appeals of the assessee have been remanded Revenue's appeals are also remanded for a fresh adjudication.

8. In the result, all the four appeals are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

Anita