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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/284 /2007-289 /2007 - CU[DB]   Date **24/08/2011**

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

To :
M/S JADON CONTRACTORS
INDRA NAGAR, OPPOSITE SBI , BHEL JHANSI

M/S JADON CONTRACTORS   Appellant
Vs
C.C.E. KANPUR   Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/371-76 2011 CU[DB]** dated 16.08.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
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 (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

(14) M/S JADON CONTRACTORS
(15) M/S SRI KRISHNA CONSTRUCTIN
INDRA NAGAR, OPP. SBI BHEL, JHANSI

(16) M/s R.K. Construction
ISAI Tola, BHEL
Jhansi (U.P.)

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 10.8.2011

Service Tax Appeal No. 284-285 of 2007

[Arising out of common Order-in-Appeal No. 70 & 71/CE/APPL/KNP/2007 dated 27.2.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Jadon Contractors — Appellants

Vs.

CCE, Kanpur — Respondent

Service Tax Appeal No. 286-287 of 2007

(Arising out of common Order-in-Appeal No. 68 & 69/CE/APPL/KNP/2007 dated 27.2.2007 passed by the Commissioner (Appeals), Custom & Central Excise, Kanpur]

M/s R.R. Construction — Appellants

Vs.

CCE, Kanpur — Respondent

Service Tax Appeal No. 288-289 of 2007

(Arising out of common Order-in-Appeal No.72 & 73/CE/APPL/KNP/2007 dated 27.2.2007 passed by the Commissioner (Appeals), Custom & Central Excise, Kanpur)

M/s Sri Krishna Construction — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:

Appeared for Appellant : Shri B.L. Narasimhan, Advocate with
Shri S. Vasudev, Advocate

Appeared for Respondent : Shri R.K. Gupta, SDR

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. 57/371-376/11 dated 16.8.11

Per **Mathew John:**

Six appeals are being decided in this proceeding. There are three different Appellants and there were two Appeals filed each of the Appellants. The Appellants have supplied manpower to M/s BHEL and M/s BHEL paid the Appellants as per the rates approved for each mandays for different categories of workers like skilled manpower, semi-skilled manpower and non-skilled manpower. The Revenue made out a case that the Appellant should have paid Service Tax on the amount received by the Appellant for supply of manpower during different period applicable for each Appeals as indicated in the table below :

Appellant	Appeal Nos.	Period	SCN date	Service tax demand	Penalties
Jadon Contractors	ST/284/07	December, 2003-March 2004	28.9.2004	1,62,160	Sec.78: 3,24,320 Sec:76: 1,62,160
	ST/285/07	April, 2004-September, 2004	25.2.2005	2,69,775	Sec.78: 5,39,550 Sec.76: 2,69,775
R.R. Construction	ST/286/07	December, 2003-March 2004	28.9.2004	1,84,850	Sec.78: 3,69,700 Sec.76: 1,84,850
	ST/287/07	April, 2004-September 2004	25.2.2005	3,23,246	Sec.78: 6,46,492 Sec.76: 3,23,246
Shri Krishna Constructions	ST/288/07	December, 2003-March, 2004	28.9.2004	1,43,216	Sec.78: 2,86,432 Sec.76: 1,43,216
	ST/289/07	April, 2004-September, 2004	25.2.2005	2,28,336	Sec.78: 4,56,672 Sec.76: 2,28,336

2. The entry of Section 65 (105)(k) of Finance Act, 1994 covered only manpower recruitment till 16.6.2005. This entry was amended on 16.6.2005 to include manpower supply also. Revenue's case is that the Appellants should have paid Service Tax for the earlier period also under the category for 'Manpower Recruitment Agency'. The Appellants submitted that the persons who were placed at the disposal of M/s BHEL for carrying out their work continued to be on the pay roll of the Appellants and they were actually responsible for paying them. The manpower supplied to M/s BHEL were never taken on the establishment or pay roll of M/s BHEL and in such circumstances it cannot be said that they were recruiting manpower for M/s BHEL. The Appellant rely on the following decisions of the Tribunal in support of their case- **M/s Mehta Security & Detective Service Vs. CCE, Jaipur** – 2007-TIOL-CESTAT-DEL and **Gyarasi Lal & Co. Vs. CCE, Jaipur-I** – 2009 (15) STR 81 (Tri.-Del.). The Appellant also rely para-22 of Circular F.No. BI/6/2005-TRU dated 27.7.2005 issued by CBEC which was issued when the Section 65(105)(k) was amended in 2005.

3. Ld. DR, on the other hand, points out that the Appellants were charging Service Tax from M/s BHEL and paying such Service Tax for the period prior to the period in each Show Cause Notice. But later they stopped such payment without intimation to the department. The Appellants had provided labour to M/s BHEL as per their

their demand and such activity is covered under 'Manpower Recruitment Agency' for the purpose of levy of Service Tax. It is also argued that M/s BHEL was the principal employer and the workers were working under the supervision of BHEL as per their directions and, therefore, the manpower was recruited for work in BHEL and used for carrying out work of BHEL. The ld. DR also points out that the Appellants were charging Rs.3.50 per manday of labour supplied by them.

4. We have considered argument on both the sides. Revenue is not able to rebut the facts argued by the Appellants. We find that this issue is no longer res integra in view of the decisions of the Tribunal cited by the Appellants. We do not find any reason to disagree with the previous decisions of the Tribunal and we respectfully follow those decisions and allow ~~three~~ these Appeals.

(Pronounced in open Court).

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM