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/1819/2010 - CU[DB]
ST/S/3866/10

Date **07/09/2011**

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

To :
M/S LOVELOCK & LEWES,

P-I, ADITYA VIHAR, SAIDULAJAB, OPPOSITE, D-BLOCK, SAKET, MEHRAULI-BADARPUR ROAD, NEW DELHI-110030

M/S LOVELOCK & LEWES, Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/437/ 2011 CU[DB]** dated 30.08.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Along with Stay order No. ST/618/11

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.R MURALIDHARAN (CONSULTANT)
BUILDING NO. 10,18TH FLOOR, TOWER C,
DLF CYBER CITY, GURGAON-122002

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay No.3866/2010 in ST/Appeal No.1819/2010

(Arising out of order in original No.2/SJS/CST/Adj/2010 dated 15.9.2010 passed by the Commissioner (Adj) Service Tax, New Delhi)

Date of Hearing: 12.8.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, 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 would 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 Department Authorities? Yes.

M/s Lovelock & Lewes — Appellants

Vs

CST, New Delhi — Respondent

Appeared for the Appellant: Shri Nikhal Agarwal, Advocate
Shri Dheeraj Srivastav, Advocate
Appeared for the Respondent: Shri Sheo Narayan Singh, Jt. CDR

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

Stay order No. ST/618/11
Final ORDER No. ST/437/11

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty and penalty, we proceed to decide the appeal with the consent of both the sides in as much as the disputed issue relates to verification of factual position.

2. After hearing both sides for some time, we find that the appellant is a firm of chartered Accountants. They have another firm of Chartered Accountants under the name and style of Price Waterhouse at Bangalore (in short PWB). During the initial days of setting of PWB, the said firm was having a shortage of staff and as such, in an agreement with the appellant, they hired the staff of the appellant for completing the assignments.

3. Service tax stands confirmed against the appellant by holding that such providing of their staff to PWB amounts to providing services of Chartered Accountants and are taxable accordingly. On the other hand, it is the appellant's contention that such services does not amount to providing services under the category of Chartered Accountants in as much as, such services were given to PWB and not directly to the clients. The bills were raised by appellant against PWB for supply of their staff and it is PWB who actually raised the professional bills to the clients ~~account~~. It is the contention of the appellant that the appellant M/s PWB had discharged the full service tax on the value of the services (including value of services received from the present appellant) provided to their clients as Chartered Accountant. As such, service

tax cannot be confirmed against the present appellant for the second time.

4. After hearing the learned Joint CDR, we find that Commissioner has agreed in principle that if M/s PWB has discharged their duty liability on the full value of services provided to their client (which includes the services of hired staff of the appellant), this appellant, who are in the nature of sub-contractor are not liable to pay service tax. However, he has observed that the appellants have not been able to satisfy the lower authority ~~him~~ by producing sufficient evidence on record that such services have already discharged the service tax liability by M/s PWB. For better appreciation, we reproduce paras 4.10 and 4.11 of the impugned order.

> *"4.10 The plea that no service tax liability is payable by sub-contractor when the main contractor has discharged the service tax liability is conditionally correct plea. It has to be proved to the satisfaction of the appropriate revenue authority that value of all the services provided by the sub-contractor have been included in the value of the services provided by the main contractor. It is not the case of L & L that PWB were assigning all work obtained in their name to L& L and were not carrying out any work themselves or through other audit and business advisory firms. In such a scenario, submission of a few representative copies of ST-3 Returns and TR-6 challans along with reply to the SCN does not prove that the value of all the services provided by L& L were covered under the value of services provided by PWB and service tax had been paid by PWB on the value of services provided by L&L as sub-contractors. The ST-3 Returns only provide for 'value of taxable service charged or billed...." Which is the gross value for the services provided*

during a particular month. Similarly under their letter dated 30.9.2009, L&L have stated value of services provided by L&L had been included by PWB in the value of services provided by them and enclosed copies of the ST-3 returns for the 'relevant period.' However, the documents do not show that the value of the services rendered by L&L was included in the value of services on which service tax has been paid by PWB. The ST-3 returns and TR-6 challans are only proof of service tax having been paid by the service provider on the gross value of the services but documents do not show the party wise value of the services. Further, L&L have not anywhere stated that in which particular month of a year the value of their services has been included in the value of services provide by PW Bangalore, Delhi, Mumbai Hyderabad or Chennai. L&L being in the professional service of the chartered accountants, have good knowledge of all these facts. Even otherwise an uncertified photocopy of a document is of little evidentiary value. In absence of any proof that service tax has been paid by the main contractor on the value of services provided by the sub-contractor, the plea that the sub-contractor has no liability to pay service tax if the main contractor has discharged the service tax, is of little help to the cause of L&L. I, accordingly, reject the plea that service tax on the services provided by L&L as a sub-contractor had been paid by PWB as the main contractor.

4.11 The Trade notice of New Delhi Commisisonerate quoted by L&L in their defence also lays down that the sub-contractor is not liable to pay service tax if the bill raised by the main contractor is inclusive of charges of services rendered by the sub-contractor. In absence of proof that the bills of PWB were inclusive of value of the services of L&L, the trade notice does not help the case of L&L."

5. As is seen from the above, the dispute relates to the factual verification of appellants plea as to ~~why~~ whether PWB has discharged their duty liability to the full extent or not. Such factual verification can only be done at the original stage. Both sides agree that the matter needs to be remanded for verification of the said plea of the appellants. It is also seen that the appellant have produced on record Chartered Accountant certificate to the effect that the entire duty liability stands discharged by PWB. In as much as the said certificate was not before the adjudicating authority, we direct him to consider the same afresh in the de novo proceedings. The appellants are at liberty to produce any other evidence to substantiate their plea.

6. With the observation as above, the impugned order is set aside and the matter is remanded to the Commissioner. We make it clear that we have not given any decision on the merits of the case, which is left open for the adjudicating authority to decide. The stay application and appeal are disposed of in the above terms.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*