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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/1858/2010 - CU[DB] Date **07/09/2011**
ST/S/3911/2010

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

To :
M/S NATIONAL INFORMATION TECHNOLOGIES
LTD.
PLOT NO. 205, INDUSTRIAL AREA, MANDIDEEP,
DEISTT. RAISEN (M.P.)

M/S NATIONAL INFORMATION TECHNOLOGIES LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/438/ 2011 CU[DB]** dated 29.08.2011 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/619/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.P.C.KASHIV
E-3/49,STOP NO 10,KAMDAR MARKET,BHOPAL

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

Date of Hearing : 19.8.2011

Service Tax Stay No. 3911 of 2010 and Service Tax Appeal No. 1858 of 2010

[Arising out of the Order-in-Appeal No. 151/BPL/2010 dated 30.9.2010 passed by the Commissioner (Appeals), Central Excise & Service Tax, Bhopal]

Coram:

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

1.	Whether Press Reporter 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 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 National Information Technological Ltd. Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Appeared for Appellant : Shri P.C. Kashiv, Advocate
Appeared for Respondent : Shri Sonal Bajaj, SDR

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

Stay order No ST/619/11
Final Order No.ST/438/11...........dated...29.8.11

Per Archana Wadhwa :

After dispensing with the condition of pre-deposit of service tax and penalty confirmed against and imposed upon the applicant/appellant, we proceed to decide the appeal itself with the consent of both the sides.

2. As per the facts on record the appellant is engaged in providing services of maintenance and repair services and commissioning and installation services. They were registered with the service tax department and were paying the service tax.

3. Revenue noticed that during the period 2003-2004 to 2006-2007, the appellants have short paid the service tax to the extent of Rs.7,71,995/-. Accordingly, they were issued a Show Cause Notice dated 10.11.2008 proposing confirmation of demand and imposition of penalties. The said Show Cause Notice culminated into an order passed by the original adjudicating authority confirming the demand of Rs.9,56,411/- along with confirmation of interest and imposition of penalties.

4. Being aggrieved with the said order, the appellant filed an appeal before the Commissioner (Appeals), who did not find favour with the appellant's contention and rejected the same. Hence the present appeal.

5. It is seen that while dealing with the two separate contentions of the appellant, the Commissioner (Appeals) has observed as under :-

> "Yet another argument of the Appellant is in respect of calculation of tax liability for the year 2003-2004. They have submitted their activity had become taxable w.e.f. 1.7.2003 and the receipt for the period 1.7.2003 to 31.3.2004 has been worked out on pro rata basis. Therefore quantification of tax liability for the year 2003-04 is incorrect. In this context, I find that though the Appellant has disputed the working of taxable value for the period July 2003 to March, 2004 they have not come up with the actual receipt for the said period along with supporting document/evidence. I therefore do not find any force about this argument of incorrect taxable value. The appellant have also argued that in respect of provision of AMC during 2004-05 the amount of Rs.2877950/- has been debited against the credited amount of Rs.7804891/- hence the correct amount of taxable income is amounting to Rs.4926941/-. However, this argument is also not acceptable as the service tax is payable on amount charged and received for provision of service. The appellant himself have stated that the amount of Rs.7804891/- was credited against the provision of service. Hence the appellant is liable to pay service tax on the amount and there is no question of reducing this amount.
>
> The appellants have also submitted they are engaged in providing services (Jobs) which involved sizable quantity of supply of Raw material and therefore taxable value should be arrived @ 33% of the receipt i.e. abatement of 67%. In this context, I find that the appellants are registered under the category of Maintenance and Repair Service and abatement of 67%, as provided in other services is not applicable to this service. I have gone through the copies of some work orders produced by the appellant and find that the work orders not at all involve supply of material. I agree with the contention that value of goods supplied is liable to be excluded from taxable value in terms of Notification No. 12/2004-ST dated 10.9.2004. Therefore it was for the appellant to claim such benefit of the notification on basis of actual and not by working out taxable value @ 33% straight way. The appellant have produced before me some copies of the invoices raised to their customers. However, the invoices were issued in respect of provision of the services only and not related to the value of sale of the goods supplied in providing the services. Having not come up with such evidence of actual value of goods consumed in providing service, the benefit of notification No. 12/2004-ST dated 10,9,2004 is not available to the appellants."

6. As is seen from the above, there is no legal dispute about the fact that the value of the services would be the value actually received for providing the services. The appellant's contention that they have received less amount from AMC during the period 2004-2005 does not stand accepted by the appellate authority on the ground that they have themselves stated the amount of Rs.7,80,491/- as credit against the provisions of service. It is stand clarified by the Advocate appearing for the appellant that the outstanding amount to the above extent shown under the column credit reflects, according to the accounting system that the same is yet to be received from the customer. Similarly in respect of the second issue, the benefit of abatement of 67% in terms of Notification No. 12/2004-ST dated 10.9.2004 stand denied by the Commissioner (Appeals) on the ground that the appellant has not come up on evidence of actual value of the goods consumed in providing services.

7. We do not find any favour with the above observations made by the appellate authority. The benefit of abatement of 67% in terms of the said notification is not dependent upon the actual value of the goods consumed in providing service. The appellants have placed before us sample copies of the invoices showing that the services which were being provided were inclusive of the value of goods. The appellate authority has not examined the said invoices. Accordingly, we deem it

fit to set aside the impugned order and remand the matter to the Commissioner (Appeals) for fresh decision on both the above issues after examining the documentary evidences produced by the appellant. Stay petition as also appeal get disposed of in the above terms.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

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