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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/1765/2010 - CU[DB] Date **07/09/2011**

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

To :
M/S HOTLINE CPT LTD

PLOT NO GBA-3, GHORONGI INDUSTRIAL AREA,
MALANPUR, DISTT- BHINDDORE(MP)

M/S HOTLINE CPT LTD Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/439/ 2011 CU[DB]** dated 01.09.2011 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54,
VIJAYNAGAR, INDORE(MP)

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 1765 of 2010

[Arising out of Order-in-Appeal No. IND-I/276/ 2010 dated 21.9.2010 passed by the Commissioner of Central Excise (Appeals) Indore]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Seen
3. Whether Their Lordships wish to see the fair copy of the Order? : Yes
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Hotline CPT Ltd. — Appellants

Vs.

Commissioner of Central Excise
Indore — Respondent

Appearance:

Shri Ramesh Nair, for the Appellants
Shri Rajender Gupta, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 30.08.2011

Final **ORAL ORDER NO. ST/ 439/11**

Per Archna Wadhwa (for the Bench):

Service Tax of Rs. 63,068/- stand confirmed against the applicant appellant for the period 2004-08 on the ground that they have provided services under the category of Business Auxiliary Services without discharging service tax liability.

2. We note that the appellant is engaged in undertaking the 'yamming' process i.e. affixing the colour yoke with the picture tube by way of yamming process and then adjusting them electronically to keep proper light rays on screen. The said activity is being undertaken by the appellants on job work basis for one M/s. Kalyani Shares Ind. Ltd. The job work is being undertaken on the basis of job work challans issued by principal manufacturers and goods are being sent back after doing job work to the principal manufactures under the cover of same challans.

3. The proceedings were initiated against the applicant appellant alleging that the activity undertaken by them does not amount to manufacture. As such it is to be concluded that the said activity is covered under the category of Business Auxiliary service liable to Service Tax. The original authority by referring to and relying upon the decision of the Larger Bench in the case of Weston Electronics Ltd. vs. CCE, Delhi III reported in [2001 (130) ELT 451 (Tri-LB)] which held

that such yamming process amounts to manufacture, dropped the demand against the appellant.

4. The said order of the original authority was appealed against by the revenue on the following grounds:

"(1) The Assistant Commissioner failed to appreciate that the process of Yamming is nothing but fixing deflection yoke with the picture tube and then adjusting them electronically to keep proper light rays on screen. Thus the process of yamming is carried out just to improve the quality of picture tube. Before and after yamming the "picture tube" remains the "picture tube", and no new product emerges as such.

(2) In a plethora of decisions various Courts have held that manufacturing is a process by which a new and different article must emerge, having distinctive name, characters and use.

(3) As mentioned above, before and after yamming process of the picture tube remains the picture tube remains the picture tube, therefore the process of yamming does not amount to manufacturing process.

(4) The Adjudicating authority has erred in relying upon the judgement of the Hon'ble CESTAT the case of M/s. Weston Electronics vs. CCE, Delhi reported in 2001 (130) ELT 451 (T-LB), while dropping the demand in the instant case in as much as the said order of the Hon'ble CESTAT has not been accepted by the Department and an SLP has been proposed against the said order. This fact has been confirmed by CCE, Delhi III vide C.No. V (law) HQ/CE-D-III/84/08 dtd. 25.3.2010 that the CESTAT order has not been accepted by the

department and proposal for filling of SLP has been forwarded to the CBEC. "

5. The Commissioner (Appeals), by referring to some other judgements held that the said process does not amount to manufacture and the appellant is liable to pay service tax. He accordingly allowed the Revenue's appeal. Hence, the present appeal.

6. It is not the case of the revenue that any appeal stands filed against the Larger Bench decision or the said Larger Bench decision stands reversed by the higher appellate forum. It is also admitted that the yamming process involved in the present appeals as also before Larger Bench are identical. Strangely Revenue while challenging the original adjudicating authority order by way of filing an appeal before Commissioner (Appeals), in the year 2010 has taken a ground that they are proposing to file SLP before Hon'ble Supreme Court. It is to be noted that the Larger Bench decision was passed in the year 2001 and no SLP was actually filed for a period of 10 years. The proposal to file SLP after about 10 years as contended in the grounds of appeal, has also not been shown to have been implemented by the revenue inasmuch as the there is nothing on record to show that such an SLP stands actually filed. We also further note that it was the revenue's own stand before the Larger Bench that yamming process amounts to manufacture. In these circumstances, it is not understood as to how Revenue could have different stand at different points of time.

7. In view of the foregoing discussion, we note that the issue as regards 'yamming process' amount to manufacture, stands finally concluded by the Larger Bench decision of the Tribunal in the case of Weston Electronics Ltd. referred supra. As such, the contra view advanced by the revenue, cannot be accepted. We accordingly, hold that the confirmation of Service Tax against the appellant is not justified and the impugned order of Commissioner (Appeals) is not sustainable. The same is accordingly, set aside and the order in original dropping the demand is restored.

8. The appeal is allowed in the above terms.

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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