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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/1168-1169/2010 - CU[DB], ST/S/2435-36/10 Date **07/04/2011**

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

To :
M/S NORASIA CONTAINER LINES,

C/O M/S CSAV GROUP AGENCIES INDIA PVT. LTD.
1ST FLOOR, 40, OKHLA INDUSTRIAL ESTATE,
PHASE-III, NEW DELHI-110020

M/S NORASIA CONTAINER LINES, Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/136-37 2011 CU[DB]** dated 24.03.11

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/187-88/11

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.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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. 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 Nos. 1168 to 1169 of 2010
Service Tax Stay Application Nos. 2435 - 2436 of 2010

[Arising out of Order-in-Original Nos. 24 & 25/RDN/2010 both dated 20.5.2010 passed by the Commissioner of Service Tax, Delhi]

For approval and signature:

Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

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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? : Yes

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Norasia Container Lines — Appellants

Vs.

Commissioner of Central Excise
New Delhi — Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the Appellants
Shri Amrish Jain, SDR for the Respondent

CORAM: Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

Date of Hearing/decision : 21.3.2011

Stay order No. ST/187-188/11,

Final **ORDER NO .**ST/136-137/11

Per Dr. C. Satapathy (for the Bench):

Heard both sides. For the reasons stated below, we waive the requirement of pre-deposit in respect of both the appeals and proceed to decide and hear the appeals themselves.

2. Shri Narasimhan, learned advocate appearing for the appellants submits that both the appellants have provided containers to various units in the Special Economic Zone. The service tax demand has been made by the adjudicating Commissioner on the ground that containers have been partly used inside the SEZ and partly outside SEZ. He states that under the Special Economic Zone Act, 2005 and the Special Economic Zone Rules, 2006, there is exemption from the payment of Service Tax on taxable service provided to a unit in the SEZ and since the appellants have precisely done that, irrespective of the fact that the containers have carried cargo out of SEZ territory, the exemption cannot be denied to them. He also states that the SEZ Act and SEZ Rules have been framed subsequent to Notification No. 4/2004 -ST dated 31.3.04 and they correctly bring out the actual import of the said notification which also allows exemption from service tax to services provided to a unit in SEZ for consumption within such SEZ.

3. Heard the learned SDR who supports the impugned order on the ground that the ST Notification No. 4/2004 limits the exemption to services consumed within the SEZ.

4. We have considered the submissions from both the sides. The notification No. 4/2004 uses expression "for consumption of services" within such "Special Economic Zone", but at the same time also uses the expression "taxable services provided to a unit of the SEZ". Both the expressions are required to be read harmoniously. In any case, the subsequently enacted SEZ Act further provides in Section 26 as under:

"Section 26.

Exemptions, drawbacks and concessions to every Developer and entrepreneur . – (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-

(a) xxxx
(b) xxxx
(c) xxxx
(d) xxxx
(e) Exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;
(f) xxxx
(g) xxxx"

5. It is clear from the above provision that there is no restriction regarding the consumption of the services and the exemption is extended to the services rendered to a unit in the SEZ for the purpose of authorised operation in the SEZ.

6. Rule 31 of the Special Economics Zone Rules, 2006 provides as under:

" **Rule 31**

The exemption from payment of service tax on taxable services under section 65 of the Finance Act, 1994 (32 of 1994) rendered to a Developer or a Unit (including a Unit under construction) by any service provider shall be available for the authorised operations in a Special Economic Zone."

7. This Rule also states that exemption from service tax is available to services rendered to a unit in the SEZ for the authorised operations. There is no dispute that the containers provided to the units in the SEZ have been used by such units for the authorised operations, namely, for bringing inputs for manufacture and carrying the finished goods out of SEZ for export purposes. Therefore, we are of the view that the impugned services relating to supply of containers in the SEZ are exempt from payment of service tax. We, accordingly, set aside the impugned order and allow the appeals. The Stay applications also stand disposed of.

(Dr. C. Satapathy)
Technical Member

(D.N.Panda)
Judicial Member

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