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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/1377/2010 - CU[DB] Date **07/04/2011**

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

To :
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

**C.C.E. RAIPUR** Appellant

Vs

**M/S SHYAM ENTERPRISES,** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/143/ 2011 CU[DB]** dated 23.03.11

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
**M/S SHYAM ENTERPRISES,**
(PROP. SHRI RAGHUVAN
SASHIDHAR NAIR) B-2/7, LAXMI
VIHAR, SECTOR-I, UDAY NAGAR,
TATIBANDH, RAIPUR (C.
2. Adv. / Consult
**MR.L.P. ASTHANA & MS REENA KHAIR**
R-163, SECOND FLOOR,
GREATER KAILASH-1, NEW DELHI - 110 048.
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 (Harvana)
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 & SERVICE TAX APPELLATE TRIBUNAL

## Service Tax Appeal No.1377 of 2010

[Arising out of the Order-in-Appeal No.45(ST)/RPR-I/2010 dated 14.07.2010 of the Commissioner of Customs, Central Excise & Service Tax, Tikrapara, Raipur]

CCE, Raipur — Appellant

Versus

M/s. Shyam Enterprises — Respondent

For approval and signature:

Hon'ble Shri D.N.Panda, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

| | | |
|---|---|---|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | |
| 3 | Whether Their Lordships wish to see the fair copy of the Order? | |
| 4 | Whether Order is to be circulated to the Departmental authorities? | |

**Appearance**

Rep. by Shri Sumit Kumar, SDR for the appellant.
Rep. by Shri L.P. Asthana, Advocate for the respondent.

CORAM : **Hon'ble Shri D.N. Panda, Member (Judicial)**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No. 57/143/11 Dated : 23.3.11

Per D.N. Panda:

Ld. DR argues that the authorities below without appreciating the methodology of working, passed orders to grant exemption to the respondents without levying tax under category of manpower recruitment and supply services. Evidence were not examined by the appellate authority below, while para 8 of the show cause notice throws light that the appellant should be brought to tax.

2. On the other hand, ld. Counsel for the respondent submits that when the erection and commissioning of tower parts is done through engagement of the employees/workers of the company that shall not amount to providing manpower recruitment and supply services. Therefore, both the authorities have rightly came to the conclusion that there should be no levy against the respondent.

3. To resolve the controversy, we examined the show cause notice itself. The show cause notice does not make any head or tail of the case of the revenue. The audit observations becoming basis of adjudication fails to

bring out ~~to~~ supply of manpower nor even brings out any element of contract between the parties for recruitment and supply of manpower. The entire show cause notice has only analysed various provisions of the Finance Act, 1994 as to levy of service tax without providing foundation for levy in respect of the activity carried out by the appellant. Show cause notice being foundation for making allegation that must clearly bring out the charge against the assessee depicting the gravity of the charge and basis. We are unable to notice the charge with a basis in the show cause notice for which the proceeding cannot be sustained. The reasoning given by authorities below does not appeal us. We dismiss the appeal of Revenue on the aforesaid reasoning.

( D.N. Panda )
Member (Judicial)

( Rakesh Kumar )
Member (Technical)

Ckp.