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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/1226-27/2010 - CU[DB], ST/S/2601-02/10, ST/COD/357-58/10, ST/M/705-06/10 Date **07/04/2011**

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

To :
M/S DIESEL LOCO MODERNIZATION WORKS

DEPUTY CHIEF MATERIAL MANAGER DEPOT,
DIESEL LOCO MODERNIZATION WORKS,PATIALA
MINISTRY OF RAILWAY, PATIALA

M/S DIESEL LOCO MODERNIZATION WORKS Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** **ST/145-46** **2011 CU[DB]** dated 29.03.11

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/212-13/11 & Misc
Order No ST/59-62/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.DAYGEESH KUMAR BHATTI,ADV
SEAT ROOM NO 13, NEW BAR COMPLEX,
HIGH COURT CHANDIGARH.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066
Court No. III

ST/Stay/2601-2602/10, ST/COD/357-358/10 & ST/Misc.705-706/10 in & Service Tax appeal Nos.1226-1227 of 2010,

[Arising out of Order-in-Appeal No. 47/CE/Appl/Chd-II/2009 dated 28.10.2009 & 34/ST/Appl/Chd-II/2009 dated 4.12.2009 both passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh].

Date of Hearing: 25th March, 2011
Dated of decision: 25th March, 2011

For approval and signature:
Hon'ble Dr. C. Satapathy, Technical Member;
Hon'ble Shri D.N. Panda, Judicial Member

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

M/s. Diesel Loco Modernization Works — Appellants

Vs.

CCE, Chandigarh — Respondent

Appearance:
Present for the Appellant : Shri D.K. Bhatti, Advocate
Present for the Respondent : Shri Sumit Kumar, D.R.

Coram: Hon'ble Dr. C. Satapathy, Technical Member
Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. SP/145-146/11 **DATED** 29.3.11

M.O. No. SP/59 to 62/11
S.O. No. SP/212-213/11

Dr. C. Satapathy:

Heard both sides.

2. Considering the grounds given in both the applications, we condone the delay in filing the appeals. Hence, both the applications for condonation of delay are allowed.

3. For the reasons stated below, we also waive the requirement of pre-deposit in respect of both the cases and take up both the appeals for hearing and disposal today itself with the consent of both sides.

4. Shri D.K. Bhatti, learned Advocate appearing for the appellants states that the appellants are functioning directly under the Ministry of Railways of the Government of India and are manufacturing components and the same had been sent to various other factories of the Railways for use therein for building locomotive, etc. Normally components are sent by rail but at times of urgency, the appellants hire services of GTA for moving the components. He states that these components are not goods. These are not sold and, therefore, the appellants are not required to pay service tax in respect of GTA service availed by them. He also states that exemption Notification No. 29/2008-ST dated 26.6.2008 covers the case of the appellants. However, he agrees that the appellants' units have been registered as factory under the Factory Act.

5. We have considered the submissions from both sides. Firstly, the Notification No. 29/2008 cited by the learned Advocate is not applicable to GTA service which is covered under Sub-clause (zzp) of Clause 105 of Section 65 of the Finance Act, 1994, whereas the exemption is meant for Sub-clause (zzzzj) of clause 105 of Section 65 of the Finance

Act. Secondly, the components manufactured and transported by the appellants very much come within the definition of goods under the Finance Act, 1994, because of being moveable property and satisfying the definition of goods in Section 2 of the Sales of Goods Act, 1930, which is referred to under the Finance Act, 1994. Further, having been registered as a factory under the Factory's Act, the appellants fall within the ambit of persons required to pay service tax as recipient of GTA services under Rule 2(1)(v)(a) of the Service Tax Rules, 1994. We find that the law makes no distinction between a private factory using GTA service and a government factory using GTA service and there is also no exemption either for a government factory or for a factory belonging to the Ministry of Railways. Under these circumstances, we find that the tax demanded along with interest is payable by the appellants. However, considering the entire facts and circumstances of the case and the fact that the appellants' factory belongs to Ministry of Railways, the penalty imposed is waived.

6. As such, both the appeals are partly allowed by upholding the tax demand and interest while setting aside the penalty.

(Dictated & pronounced in the Open Court.)

(Dr. C. SATAPATHY)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RK