

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/1071/2010 - CU[DB]
ST/S/2153/2010

Date 19/09/2011

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

To :
M/S TYAGI ASSOCIATES
B-4-5, BHAGWATI COMPLEX, GARH ROAD,
MEERUT(UP)
M/S TYAGI ASSOCIATES

Appellant
Vs
Respondent

C.C.E. MEERUT II

I am directed to transmit herewith a certified copy of **Final order No.ST/477/ 2011 CU[DB]** dated 14.09.2011
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/655/2011


Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult

MR.RISHI & ASSOCIATES
60-VILVESHWARPURI,BEHIND
SADAR THANA, MEERUT CANTT, MEERUT.

3. C.D.R

4. Bar association. CESTAT, New Delhi

5. Director Publications. Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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 (Harvana)

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)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III**

ST/Stay No.2153/2010 and ST/Appeal No.1071/2010

(Arising out of order in appeal No.215/CE/MRT.I/2010 dated 24.2.2010 passed by the Commissioner of Central Excise (Appeals), Meerut)

Date of Hearing:19.8.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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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? | <i>Yes</i> |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not? | <i>No</i> |
| 3. | Whether their lordships wish to see the fair copy of the order? | <i>Seen</i> |
| 4. | Whether order is to be circulated to the Department Authorities? | <i>NO</i> |
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M/s Tyagi Associates

Appellants

Vs

CCE, Meerut-II

Respondent

Appeared for the Appellant: Shri Anurag Rishi, Advocate

Appeared for the Respondent: Shri Amresh Jain, DR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Stay order No ST/655/11
 Final ORDER No SA/477/11

Per Mathew John:

At the outset, the learned Counsel for the appellants submits that they have paid an amount of Rs. 18,32,149/- out of the total demand of Rs. 32,14,759/- and according to them their liability will be equal to the tax paid by them. Considering the part amount deposited as sufficient for the purpose of Section 35-F of Central Excise Act, 1944, we have waived the requirement of balance amount and taken up the appeal itself for disposal.

2. The Appellants are in the business of fabrication of parts of plant and machinery required in sugar mills and erecting them. While raising bills to the clients, they charged service tax but did not remit such service tax to Government and this fact was detected while auditing the records of one of the sugar factories and thereafter the records of the appellants and some of their other clients were scrutinized. Revenue was of the view that the appellants had to pay service tax under "Erection and Commissioning" and therefore, issued a show cause notice demanding service tax on the value of services realized by the appellants during the period 2004-05, 2005-06 and 2006-07. The show cause notice was adjudicated by the Additional Commissioner confirming a demand of Rs. 43,14,759/- along with interest under Section 75 of the Finance Act, 1994. Further a penalty of Rs. 50 lakhs has been imposed under Section 78 of the Finance Act, 1994. Aggrieved by the said order, the appellant filed appeal with the Commissioner (Appeals) who confirmed the

order of the adjudicating authority. Aggrieved by the order of Commissioner (Appeals), the appellants have filed this appeal before the Tribunal.

3. The prime ground raised by the appellants is that both the orders by the lower authorities were passed ex-parte and thus are in violation of principles of natural justice. The appellants submit that when the case was posted for hearing before the adjudicating authority, the wife of the proprietor was suffering from cancer and he had gone out of the country for treatment and could not attend the personal hearing. He submits that the order in appeal by the Commissioner (Appeals) was also passed without hearing the appellant and they did not have an opportunity to argue their case properly.

4 On the merits of the case, the appellants submit that major part of the work undertaken by them was erection of structures and such activity including fabrication was not within the scope of entry at Section 65(105)(zzd) of Finance Act, 1994 till 1.5.2006. The activity of fabrication and erection of fabricated structures was brought into the tax net only from 1.5.2006 and prior to that date, they were not liable to pay service tax on erection of structures and once such amount was excluded, their liability would be reduced substantially.

5. They also pointed out that the figures worked out by the Revenue include amounts which have not been realized by them during the impugned period and therefore, the amount has to be correctly worked out. However, it is also seen that they have

accepted the fact that they have collected some amount as service tax and there was delay in depositing such service tax in Government account on account of severe financial crunch which was faced by the appellants as per their statement.

6. The appellants submit that they have already paid an amount of Rs. 18,32,149/- on various dates as indicated below:-

Date	Amount
18.7.2007	1,88,700
28.7.2007	3,06,000
4.4.2008	9,69,000
7.6.2008	3,06,000
11.9.2009	62,449
Total	18,32,149

However, it is not coming out clearly that these deposits are towards the liability confirmed under the impugned order. However, the impugned order itself records that there are payments of Rs. 1,88,700/- on 18.7.2007 and Rs.3,06,000/- on 28.12.2007 against the liability arising under the impugned order which has been confirmed under the order in original.

7. The learned DR submits that adequate opportunity was given to the appellant during adjudication stage by giving personal hearings on 6.1.09, 14.1.09, 21.1.09, 12.2.09, 19.3.09, 23.3.09 and 24.3.09. On 12.2.09, the learned Advocate for the appellants submitted a letter along with his vakalatnama and requested for 15 days' time for preparation of the case. Thereupon, three dates i.e.19.3.09, 24.3.09 and 24.3.09 were given to him to appear for personal hearing but the Advocate asked again on 23.3.09 for one month's time on the ground that the noticee had gone out of country for treatment of his wife who is suffering from cancer. Therefore, learned SDR was of the view that adequate opportunity

was given during adjudication stage. In the matter of proceedings at the appellate stage, it is pointed out that personal hearings were given on 18.12.09, 12.1.10, 29.1.10 and 23.2.10 but nobody appeared for personal hearing and therefore, the case was decided *exparte*.

8. We have considered arguments on both the sides. We find that there is no clear finding whether the entire tax demanded falls in the category of tax collected from the customers but not deposited with the Government. We notice that provisions of Section 12D of Central Excise Act read with Section 83 of Finance Act, 1992 has not been invoked in the show cause notice or in the order in original. Further no attempt has been made by the Revenue to demarcate the value corresponding to erection of structures which was not taxable prior to 1.5.06. Such information is very crucial for passing a legal and proper order in this case. We notice that the appellants have now submitted a work sheet showing the value of fabrication in each of the contract. They claim that service tax is not payable on fabrication charges. But these facts require to be verified by the adjudicating authority and the issue is to be decided. Therefore, no useful purpose will be served by keeping this case pending before the Tribunal. Therefore, we set aside the order in appeal and remit the matter to the original authority for considering the details

now submitted and of the legal arguments and any further evidence or arguments that the appellants have to make. Thus the remand is made keeping all the issues open.

9. Both stay petition and appeal are disposed of accordingly.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*