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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

Date **04/10/2011**

Appeal No. ST/759 /2007 - CU[DB]
ST/5/08 & ST/CO/52/08

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

Appellant
Vs
Respondent

C.C.E. RAIPUR

M/S CENTRE POINT COLOUR LAB.

I am directed to transmit herewith a certified copy of **Final order No.ST/526-27/ 2011 CU[DB]** dated 03.10.2011 **relating to Service Tax** passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S CENTRE POINT COLOUR LAB.
56-57, JAIRAM COMPLEX,
SHARDA CHOWK,G.E.ROAD,
RAIPUR (CG)

2. Adv. / Consult Mr. A.K. Batra,
C/o Respondent

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 Regist
(Customs Appeal Bran

15. M/s Agarwal Photo finish
~~off~~ opp. Gujrati School.
K.K. Road, Raipur (CG)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No.759 of 2007

[Arising out of Order-in-Appeal No. 56(ST) RPR-I/2007 dated 10.8.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur]

Commissioner of Central Excise Raipur — Appellants

Vs.

M/s.Centre Point Colour Lab — Respondent

Service Tax Appeal No. 5 of 2008
With ST/CO/ 52/2008

[Arising out of Order-in-Appeal No. 81/RPR-I/2007 dated 20.9.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur]

Commissioner of Central Excise Raipur — Appellants

Vs.

M/s. Agrawal Photo Finish — Respondent

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? : No

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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Appearance:

Shri Sunil Kumar, SDR for the Appellants
Shri A.K. Batra and Shri A.K. Mishra, Advocates for the Respondent

CORAM:

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

Date of Hearing/decision : 14.09.2011

Final **ORAL ORDER NO. ST/526-527/11**

Per Archna Wadhwa (for the Bench):

Being aggrieved with the orders passed by Commissioner (Appeals) vide which he has set aside the demand of Service tax of Rs.5,18,306/- from M/s. Centre Point Colour Lab and Service Tax of Rs.1,25,045/- from M/s. Agrawal Photo Finish, Revenue has filed the present appeals.

2. We have heard Shri Sunil Kumar, learned SDR for the Revenue and Shri A.K. Batra and Shri A.K. Mishra, learned Advocates for the Respondents.

3. As per the facts on record, the respondents are engaged in providing photography services to their customers. The dispute in the present appeal relates to the legal issue as to whether the value of paper, chemicals and packing materials used by them is required to be added in the value of services being provided by them so as to make the entire gross amount charged by them from their clients leviable to service tax. The Commissioner (Appeals) has held in favour of the respondents by following the precedent decision of the Tribunal in the case of Shilpa Colour Lab vs. CCE, Calicut reported in [2007 (5) STR 423 (Tri-Bang)]

as also in the case of Bharat Sanchar Nigam Ltd. vs. Union of India reported in [2006 (2) STR 161 (SC)] and Adlab vs. CCE, Bangalore reported in [2006 (2) STR 121 (Tri)]. He has accordingly set aside the demand of duty against the respondents

4. We find that the issue on merits is no more res integra and stands settled in favour of the Revenue by the Larger Bench decision of the Tribunal in the case of M/s. Agrawal Colour Photo Industries vs. Commissioner, vide Misc. order No. ST /129/11 dated 11.8.2011. It stands held in the said decision of the Larger Bench that the value of services in relation to photography would be the gross amount charged including the cost of goods and material used and consumed in the course of such services.

5. However, we note that period involved in the present appeals is from 1.7.2003 to 31.3.2005 and show cause notice were raised on 22.9.2005 in the case of M/s. Centre Point Colour Lab and on 3.4.2006 in the case of M/s. Agrawal Photo Finish. As such, the demand stands raised by invoking the extending period of limitation. It is seen that the said issue was the subject matter of consideration by the Government as also by the Tribunal. Government in its circular F.No. 233/2/2003-CX-4 dated 7.4.2004 addressed to the Punjab Colour Lab Association had clarified that service provider was entitled to claim exemption in respect of inputs, material consumed / sold to the service recipient. Apart from the above clarification, the earlier decision of the Tribunal in the case of Shilpa Colour Lab as also in the case of Adlab Labs etc. were in favour

of the assessee. As such, it can be safely concluded that there could be bonafide belief on the part of the respondents as regards non inclusion of the material cost in the value of services. The issue stands decided against the respondents by the Larger Bench decision of the Tribunal delivered on 11.8.2011. The Hon'ble Supreme Court in the case of Jaiprakash industries Ltd. vs. CCE, Chandigarh reported in [2002 (146) ELT 481 (SC) has observed that when there is a bonafide doubt as regards the non-excisability of the goods due to divergent views of the High Courts extended period of five years cannot be invoked. It further stands observed that mere failure or negligence in not taking licence or not paying duty is not sufficient to invoke extended period. By applying the ratio of law declared in the above decision, we find that since the earlier decisions of the Tribunal were in favour of the assessee, it has to be held that there was bonafide doubt about the inclusion of the cost of material in the cost of services. If that be so, no malafide can be attributable to the appellant so as to invoke the extended period of limitation.

6. We find that the issue of limitation was considered at length in an identical matter in the case of CCE Raipur vs. Satyam Digital Photo Lab vide Final Order No. ST/503-504/11 dated 20.9.11, it was held that the notices issued beyond the period of limitation would not stand inasmuch during the relevant period, there was sufficient material for the assessee to entertain a bonafide belief that the value of raw material used would not form part of the value of services. By holding so, the

matter was sent back for requantifying the demand falling within the period of limitation. The Bench further observed that on account of bonafide belief, no penalty is required to be imposed. By applying the ratio of the above decision to the facts of the present case, we hold that the demand beyond the period of limitation is time barred and no penalty is required to be imposed. Matters are remanded for requantifying the duty demand falling within the period of limitation. While requantifying the duty, the claim of the appellants as regards the credit of duty/ tax paid on the raw materials is required to be considered and if found eligible, to be allowed.

7. Appeals are disposed of in the above terms.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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