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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/30 /2008 - CU[DB]
ST/COD/14/11 & ST/CO/6/2011

Date **08/07/2011**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant
Vs
M/S OM CONSTRUCTION COMPANY Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/263/ 2011 CU|DB|** dated 07.07.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Misc Order No ST/112/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S OM CONSTRUCTION COMPANY
ABUSARIA AGRICULTURE FARM
HOUSE, STATION ROAD,
JHUNJHNU, RAJASTHAN

2. Adv. / Consult
MR.B.K SHARMA
M.B.-05, GALI NO 1,
SHAKARPUR, DELHI.110092

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 (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 Branc

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

COURT NO. II

Service Tax Appeal No. 30 of 2008 with ST/COD/14/2011 & ST/C.O./6/2011

[Arising out of Order-in-Appeal No. 181(RKS)ST/JPR-I/2007 dated 16.10.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur-I, Jaipur].

Date of Hearing/decision: 29th June, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical 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?	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?	No

CCE, Jaipur-I — Appellant

Vs.

M/s. Om Construction Co., — Respondent

Present for the Appellant : Shri Amresh Jain, D.R.
Present for the Respondent : Shri B.K. Sharma, Advocate

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Mathew John, Technical Member

Misc order No. ST/112/11
FINAL ORDER NO. ST/263/11 **DATED** 7.7.11

Per D.N. Panda:

The question for answering as arising out of this appeal is whether the activity carried out by the appellant is covered under the category of "Construction of Road" or "Maintenance and Repair". Learned D.R. submits that the certificate issued by Executive Engineer is not valid and the Executive Engineer is not competent to issue such certificate. Learned appellate authority relied upon those documents to grant relief partially to the respondent. He draws our attention to annexure at page 45 of appeal folder to submit that column No. 7 of work schedule relates to repair only. Therefore, repair and maintenance activity carried out by the respondent should not enjoy exemption.

2. Learned Counsel appearing for the respondent submits that they have also filed a cross objection that may be treated as appeal because the respondent could not contact their consultant for preparation of cross objection since the consultant was out of station. He submits that the said cross objection does not have any new ground. He supports the order passed by the learned appellate authority below.

3. Heard both sides and perused the record.

4. When we looked into COD application we did not find any cogent reason stating the dates on which consultant was contacted. The respondent in para 2 stated that time for filing cross objection expired on 12.10.2010 since notice for such filing was received on 28.10.2010. With the contentions

above application for condonation of delay was filed without any affidavit. Therefore, COD application is rejected. So also, we find that when there is no new ground in the cross objection to receive consideration in appeal under law but that is liable to be dismissed. The cross objection merely supports the first appellate order. We order accordingly.

5. Coming to the merits of the case of Revenue about the contention that activity carried out by the respondent was maintenance and repair, we find in para 5.03 that learned Commissioner (Appeals) has applied his mind showing extent of examination he has done to come to his conclusion. The manner he has depicted facts and law is so clear that shows that he has properly applied his mind since he was able to say that construction of road shall not enter into purview of taxation on the facts and circumstances of the case. In Para 6 of the appellate order he has properly considered what are the activities ~~entered into taxation~~ that were to be taxed. There is no cogent evidence to impeach findings of appellate authority. Learned D.R. relies on page 27 & 28 of appeal folder for the proposition that Executive Engineer is not competent authority to issue the concerned certificate. But record does not carry any evidence gathered by further inquiry as to repair or construction as soon as certificate of Executive Engineer came to record. Even at this appellate stage there is no evidence from Revenue to discard Executive Engineer's certificate. That authority is a public servant having technical

knowledge of engineering in the field. Such an authority cannot be found to be incompetent to issue the certificate in question unless otherwise proved and evidence adduced by Revenue. Hence, there is no scope to consider Revenue's ~~case~~ plea on competency of Executive Engineer. Finding no legal infirmity in the impugned order, Revenue's appeal is dismissed.

6. In the result, Revenue's appeal is dismissed. Misc. application for condonation of delay rejected and Cross Objection is dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK