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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/157 /2008 - CU[DB] Date **20/07/2011**

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

To :
C.C.E. CHANDIGARH

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

C.C.E. CHANDIGARH Appellant

Vs

M/S MAHAVIR ISPAT UDYOG Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/294/ 2011 CU[DB]** dated 28.06.2011 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 MAHAVIR ISPAT UDYOG
MOTIA KHAN,MANDI
GOBINDGARH,DISTT.
FATEHGARH SAHIB.

2. Adv. / Consult

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. II

Date of Hearing : 28.6.2011

Service Tax Appeal No. 157 of 2008

[Arising out of Order-in-Appeal No. 79/CE/CHD/08 dated 22.1.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

CCE, Chandigarh — Appellant

Vs.

M/s Mahavir Ispat Udyog — Respondent

Appearance:

Appeared for Appellant : Shri Fateh Singh, SDR
Appeared for Respondent : None

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

Final Order No. ST/29L/11 dated 22.6.11

Per **D.N. Panda :**

The Respondent is not present nor there is any Application on record praying for any adjournment. Revenue is in Appeal being aggrieved by the first Appellate order holding that there was sale of goods by the Respondent on behalf of the principal to customers, falling under the category of consignment agent under the taxable entry relating to Clearing and Forwarding Agent. The ld. Appellate Authority viewed that the commission agent having been brought to the ambit of business auxiliary service only with effect from 1.7.2003, the Respondent is not liable to tax for the period 1.10.2000 to 31.3.2001.

2. Ld. DR appearing on behalf of the Revenue reiterates the grounds of Appeal. He invited attention to page No. 5 of the Appeal memorandum to show the nature and activity carried out by the Respondent.

3. In absence of Respondent, we have heard the Appellant - Revenue and were conscious that the Respondent may suffer if we pass an ex. parte order. Therefore we made an exercise to go through the Adjudication and the facts borne by adjudication record. Para 1.1. of the Adjudication order states that the Respondent carried out the activity as a consignment agent from M/s Mahavir Ispat Udyog, M/s Rathi Industries Ltd., M/s Hindustan Iron & Steel Co., M/s Bansal Sales Corporation and M/s DSR Steels Pvt. Ltd. The Adjudication order without examining the terms and conditions of the contracts between

the Respondent and the above principals proceeded to levy service tax demand of Rs.52,160/- on the ground that the Respondent was providing clearing and forwarding services to its above principals. We have noticed from the Appellate order that for the period 1.4.2000 to 31.3.2005, the Appellant had earned consignment commission of Rs.14,91,910/- and that called for levy of Service Tax of Rs.52,160/-. We proceeded to examine copy of the agreement dated 1.4.2001 between the Respondent and its principal M/s Hindustan Iron & Steel Co., New Delhi. Upon examination of that agreement only, the Commissioner (Appeals) was of the view that the principals supplied the product to the Respondent on consignment basis which were sold by the Respondent to the customers. According to the Appellate Authority, such an activity would not come under the purview of clearing and forwarding agent. He further proceeded to provide the reasoning that the consignment sale made by the Respondent on commission basis having been taxable only from 1.7.2003 and since such service was exempted from Notification No. 13/2008-ST, there shall be no liability up to 8.7.2004. According to him, service provided by the Respondent was more appropriately classifiable under the taxing entry relating to business auxiliary service (reference page 20 of the Appeal folder) when the Respondent was the commission agent.

4. Reading page 5 in the appeal folder ld. DR says that the activity described in different clauses brings the Respondent as a consignment agent to the fold of clearing and forwarding agent service in terms of definition of that term under Section 65(25) of the Act. We have perused page 5 & 6 of the Appeal folder where Revenue has depicted the meaning of the clearing and forwarding agent claimed to be appearing under Section 65(25) of the Finance Act, 1994. We agree with learned DR that consignment agents were within the scope of interpretation of that term "Clearing and Forwarding Agent". Consequent upon such finding by us, we hold that in so far as the agreement of the Respondent with M/s Hindustan Iron & Steel Co. is concerned, the Respondent is liable to service tax on the gross value received for the service provided to that principal during the material period. But we do not find anywhere about the examination of other agreements entered into between the Respondent and the different parties as appearing in para 1.1. of the Adjudication order at page 22 of the appeal folder. We would have certainly sent the matter back to the Adjudicating authority to examine each and every agreement before coming to the conclusion so also the Appellate Authority could have screened the finding against each and every agreement at the first Appellate stage. But nothing has been done by both the Authorities

below in the first round of examination and the amount of Service Tax involved is only Rs.52,160/- . Such a smallness of the amount does not warrant to send the matter back because the matter is already five years old from the date of Show Cause Notice. The terms and conditions of all other contracts may not be same as that of the agreement with M/s Hindustan Iron & Steel Co. which is not being stated to be representative samples before us. There is no scope to extend the litigation again sending the matter back for re-adjudication.

5. We do not agree with the first Appellate authority's reasoning that consignment agent shall not be falling under clearing and forwarding category when law by definition under Section 65(25) of the Finance Act 1994 brought such category of service provided under the clearing and forwarding agent. Revenue argues that if taxing entry attracts particular type of service provided under that entry during a particular period if reclassified by law after that period under a different category, that does not deprive Revenue to hold that in two different periods the service provided was liable to tax under two different entries in view of wide latitude of legislature in taxing goods and services. Therefore, the reasoning in the last but one para by the Appellate authority cannot be approved.

6. On the aforesaid reasoning and considering remand of the matter after five years to deal with a small demand shall serve no useful purpose, we confine the levy which is the outcome of the agreement with M/s Hindustan Iron & Steel Co. and the Respondent should get proper opportunity for taxability on the receipt from that principal during the relevant period for taxation under the category of clearing and forwarding agent. Therefore, Appeal of Revenue is partially allowed to the extent indicated above.

(Dictated & pronounced in open Court)

(D.N. Panda)
Member (Judicial)

(Mathew John)
Member (Technical)

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