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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/171 /2008 - CU[DB] Date **08/06/2011**

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

To :
C.C.E. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.

C.C.E. MEERUT I Appellant

Vs

M/S ANKUSHISH ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/222/ 2011 CU|DB|** dated 02.06.11 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 ANKUSHISH ENTERPRISES
9, EAST CANAL ROAD,
DEHRADUN.

2. Adv. / Consult ; MRS RENU GUPTA, ADV
1058 SEC-3 RK PURAM
NEW DELHI

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 Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT No. II

Service Tax Appeal No. 171 of 2008 (DB)

Date of hearing/decision: 25th May, 2011

[Arising out of the Order-In-Appeal No.264/CE/MRT-1/2007, dated 28.12.07 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut]

For Approval and signature :
Hon'ble Shri D.N.Panda, Judicial Member
Hon'ble Shri Sahab Singh, 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?	:
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 Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Meerut-I — Appellant

Versus

Ankushis Enterprises — Respondent

Appearance
Ms. Renu Gupta – for the respondent.
Shri Amrish Jain, Departmental Representative – for the appellant.

CORAM : **Hon'ble Shri D.N.Panda, Judicial Member**
Hon'ble Shri Sahab Singh, Technical Member

Final Order No. ST/222/11 Dated : 2.6.11

Per : D.N. Panda

Revenue being aggrieved by the first Appellate Order reversing adjudication order has come in appeal on the ground that reimbursement of expenses shall form part of assessable value of the taxable service namely clearing and forwarding services. Today, there is neither cross appeal of the respondents nor any cross objection of Assessee before us.

2. Shri Amrish Jain, Ld. DR submits that dispute in the present appeal has already been settled by the Tribunal in the case of Naresh Kumar & Co. Pvt. Ltd. vs. Commissioner reported in 2008(11)/STR/578(Tribunal) and also in the case of CCE, Chandigarh vs. Team S&S reported in 2011(21)STR 290(Tri.Del.). Once the expenditure reimbursed are intimately connected to the service provided and no taxable service is performable without incurring such expenses, that forms part of assessable value of the taxable services. Ld. DR also submits that original authority has examined the case carefully and passed the appropriate order.

3. On the other hand, the respondent's contention is that the adjudicating authority has acted erroneously for which Appellate Authority passed proper order. To such a submission, Ld. DR submits that in the Order-In-Original in para 27, it is stated that appellant intentionally made an arrangement with M/s Amway

Enterprises in a way so as to mislead the department that the portion representing "reimbursement of expenses" was not part of "commission" and therefore did not pay service tax on that amount. Appellate authority has also mentioned in the order that by way of their aforesaid conduct, M/s Ankushish Enterprises has rendered themselves liable to pay a penalty, in addition to service tax and interest thereon.

4. Heard both sides and perused the records.

5. In absence of cross appeal or cross objections by the respondent, the respondent has no new ground for argument of its case. It had challenged the adjudication order on three counts as appeared from page 2 of the impugned order. The first appellate authority granted relief to respondent in respect of clearing and forwarding services provided excluding reimbursed expenses from assessable value while law requires inclusion of assessable value to the gross receipt from provision of clearing and forwarding services. We are in full agreement with the revenue and direct that the appellate order should be reversed to impose service tax liability on the respondent to the tune that was imposed by the adjudication order.

6. So far as penalty is concerned, we are not finding any material to appreciate that there was intention on the part of the respondent to cause evasion. Without any material on record, para 27 of the adjudication order which states that there was an intentional arrangement of the respondent with M/s Amway Enterprises is baseless. Therefore, levy of penalty under section 78 of the Finance

Act, 1994 is unsustainable. Similarly, penalty under section 75 needs waiver.

7. So far as the penalty under section 76 is concerned, because of the confusion at early stage of the implementation of law, the appellant need not suffer. Such reasonable cause grants relief to Assessee against penalty levied under section 76 of the Finance Act, 1994.

8. So far as interest under section 75 is concerned, that stands confirmed.

9. Ultimately : (i) there shall be levy of service tax demand to the extent levied by adjudication order.

    (ii) Penalty imposed under section 78, 76 and 75 is waived.

    (iii) Levy of interest under section 75 shall follow.

10. Revenue's appeal is partly allowed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

RK-I