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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/126 /2008 - CU[DB] Date **07/06/2011**

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

To :
M/S O.P.KHINCHI, CONTRACTOR
104-B, PRIVATE SECTOR,TALWANDI KOTA

M/S O.P.KHINCHI, CONTRACTOR Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/225/ 2011 CU[DB]** dated 03.05.11 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.BIPIN GARG, ADV
B-1/1289-A VASANT KUNJ NEW DELHI - 70

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 Registrar
(Customs Appeal Branch)

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

COURT NO. II

Service Tax appeal No. 126 of 2008

[All arising out of Order-in-Appeal No. 210(RKS)ST/JPR-I/2007 dated 5.12.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh].

Date of Hearing: 24th May, 2011
Date of Decision: 24th May, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judiciall 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 should 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 Departmental authorities?	

M/s. O.P. Khinchi Appellant

Vs.

CCE, Jaipur Respondent

Present for the Appellant :Smt. Sukriti Das, Advocate
Present for the Respondent :Shri B.L. Soni, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Sahab Singh, Technical Member

FINAL ORDER NO. ST/225/11

Per D.N. Panda:

The appellant came in appeal against the first appellate order confirming levy of service tax on various services provided as proposed by show cause notice dated 26.6.2006. Learned appellate authority depicted the meaning of the term Cleaning activity and maintenance and repair activity at page 18 and 19 of appeal folder respectively and looked to the issue. Examination of appellate order with show cause notice revealed that break up of different services provided was not considered in its proper perspective. So also, the figure depicted in show cause notice in the form of table does not throw light as to what was the consideration received for different activities to bring them to the fold of law.

2. Learned Counsel for the appellant invited attention to some of the job orders appearing at page 23 to 43 of appeal folder. Invoices related to certain activities may relate to gardening. But the invoices at page 30, 31, & 32 relates to miscellaneous job in PVC Plant. The invoices at page 38 relate to welfare activities. Invoices at page 44 relate to miscellaneous job of PVC plant and invoice at page 41 shows miscellaneous work done in plant.

3. When the invoices above indicate different activities carried out, the authorities should have examined each and every activity thoroughly to bring the appellant to the fold of charge properly under different taxable entries. Neither the show cause notice has made any attempt to lay foundation of

proceedings in clear terms in respect of each activity nor the authorities below made effort to find out the substance of allegation therein. Show cause notice is basic foundation of proceedings which may give rise to different consequences of law. Composite show cause notice issued left the matter in dark. The authorities were also helpless to come out clearly as to incidence of tax on each such activities. We are unable to appreciate action of both the authorities below who have failed to pass well reasoned order. Neither they spelt on incidence of tax on each activity differently nor tested the activities under touch stone of law because the show cause notice itself was ill founded. Therefore, we have no other go than to allow appeal of the appellants. We order accordingly.

4. When result of the appeal is as aforesaid, learned Counsel prays that consequential relief may also follow. We have no hesitation to order such relief to follow in accordance with law subject to verification of record.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

RK