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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/1548/2010 - CU[DB] Date **27/06/2011**
ST/COD/462/10, ST/S/3248/10

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

To :
M/S BRIJ MOHAN SURINDER KUMAR,
6-A, C, JAWAHAR MARKET, NANGAL TOWNSHIP,
DISTT, ROPAR.

M/S BRIJ MOHAN SURINDER KUMAR, Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/238/ 2011 CU[DB]** dated 20.06.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**
.
Alongwith Stay Order No ST/342/11 & Misc Order No ST/102/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.HARVINDER SINGH,ADV
34/10, RAJ NAGAR, KAPURTHALA ROAD,
SUNNY BISTER BHANDAR, JALANDHAR.

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

St/cod/462/10 & ST/STAY/3284/10
Service Tax Appeal No. 1548 of 2010

[Arising out of Order-in-Appeal No. 37/st/Chd-II/2010 dated 21.07.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh].

Date of Hearing/decision: 6th 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?	
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. Brij Mohan Surinder Kumar — Appellant

Vs.

CCE, Ludhiana — Respondent

Present for the Appellant : Shri Harvinder Singh,Advocate
Present for the Respondent : Shri B.L.Soni, D.R.

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

Misc order No. ST/102/11
FINAL ORDER NO. ST/238/11 **DATED** 20/6/11
Stay order No. ST/342/11

Per D.N. Panda:

There is only 8 days delay in filing the appeal. The reason for delay explained appears to be reasonable for which delay so made is condoned and Misc. application for condonation of delay is allowed.

2. This appeal is against levy of service tax demand of Rs. 82,251/- imposedby learned Commissioner in exercise of power under Section 84 of the Finance Act, 1994 (hereinafter referred as the Act). Show cause notice was issued on 9.2.2007 asking the appellant to explain why they ~~have not~~ should not ~~been~~ be brought into the fold of tax under the category of maintenance and repair service under Section 65(105)(zzg) of the said Act. Against the said show cause notice adjudication order dated 28.7.2008 was passed holding that taxable ~~services~~ service was provided by the appellant to the service recipient M/s. N.F.L. during the period 2003-04 to 2005-06 of Rs. 2,174/-. The reasoning of such demand was examined by him in para 3 of the order.

3. When the result of the adjudication order was as above, suo moto revisionary power was exercised issuing notice on 28.4.2010 by the learned Commissioner, Chandigarh. In the show cause notice at para 8, the authority found that adjudication order was prejudicial to interest of Revenue because service provided by the appellant was taxable under the category of commercial or industrial construction service.

He also held so in the order passed on 21.7.2010. With aforesaid factual grounds appeal came before this Tribunal.

4. Learned Counsel appearing for the appellant submits that more than one number of service was alleged to have been provided by the appellant. But all such services were brought under the category of repair and maintenance. That itself is erroneous for which adjudicating authority properly decided the matter by an order dated 28.7.2008 reducing tax demand to Rs. 2,174/-. The Revisionary Authority should not have completely revised the order on a different premise (which was not in the show cause notice). Therefore, the appellant has been aggrieved. Learned Counsel prays for total rejection of the impugned order.

5. On the other hand, learned D.R. submits that Revisionary authority exercised power because the adjudication order passed earlier was erroneous.

6. Heard both sides and perused the record.

7. We have found that the impugned order was passed raising the service tax demand of Rs. 82,251/- and penalty under Section 76 & 78 of the Act was also imposed. We have perused the show cause notice referred to above issued for adjudication. Show cause notice ~~intended to bring~~ listed different services provided by the appellant in second para thereof. We have also examined contents of annexure appearing at page 29 of appeal folder. That page only indicates about only one service provided and most specifically at great length

explains to have been carried out for repair and maintenance service, that too of immovable property.

8. The Revisionary authority proceeded on a different premises for issuing show cause notice asking the appellant to show the reason why its services should not fall under the category of commercial or industrial construction service. This is clear from para 9 of show cause notice for revision under Section 84 of the Act.

9. The object of Section 84 being only to review an order causing prejudice to the interest of Revenue, that Section does not confer original jurisdiction at all. When the original jurisdiction was exercised issuing show cause notice on a different premises the revisionary authority had no power to review the show cause notice itself usurping the power of the original authority. Revisionary power is only exercisable when an order causing prejudice to interest of Revenue comes up. Matter arising on the basis of SCN only can be reviewed in ~~It is that order touchable in only~~ revisionary jurisdiction.

9. In view of the aforesaid observations, it is not possible to upheld the order passed by the Revisionary authority and the appeal itself requires to be disposed off. Therefore, we dispense with the requirement of pre-deposit and allow the appeal.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK