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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/1402/2010 - CU[DB]** Date **07/06/2011**
ST/S/2952/10, ST/COD/408/10

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

To :
M/S ONKAR INDUSTRIAL & SECURITY PVT. LTD.

SCO NO. 188-190, 1ST FLOOR, SECTOR 34-A,
CHANDIGARH. (PUNJAB)

M/S ONKAR INDUSTRIAL & SECURITY PVT. LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/231/ 2011 CU[DB]** dated 03.06.11 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/330/2011 &
Misc Order No ST/96/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

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

2. Adv. / Consult
MR.GAGAN KOHLI
394,SECTOR-30 A, CHANDIGARH.

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. 2, R.K. Puram, NEW DELHI

COURT NO. II

ST/COD/408/2010 & ST/Stay No. 2952/2010 in & Service Tax Appeal No. 1402/2010

[Arising out of Order-in-Original No. 77/STC/CHD-I dated 21.5.2010 passed by the Commissioner of Central Excise, Chandigarh].

Date of Hearing: 27th May, 2011

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 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. Onkar Industiral & Security Pvt. Ltd., — Appellant

Vs.

CCE, Chandigarh — Respondent

Present for the Appellant : Shri Gagan Kohli, Advocate
Present for the Respondent : Shri R.K. Verma, D.R.

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

M.O. No. ST/96/11

FINAL ORDER NO. ST/231/11

S.O. No. ST/330/11

Per D.N. Panda:

For the reasons stated by the learned Advocate delay of 11 days in filing the appeal is condoned and appeal is admitted.

2. Learned Counsel submits that service tax demand of Rs. 37,59,867/- shall not sustain because the appellant provided entire details of receipts from the manpower supply, and extract of which is annexed as Annexure 'C' at page 151 of appeal folder. But that was not examined by the original authority. The appellant clearly stated its figure in balance sheet. Amount received from the service recipient under different categories appears in record and reconciliation of these figures with balance sheet figure was done to reply to show cause notice.

3. The authorities while passing order, without looking to the reconciliation merely viewed that there was discrepancy in receipts and taxes due were not deposited. Such an abrupt conclusion drawn has no meaning for the purpose of law when the extent of examination made in para 39.12 and 39.16 of the order of the original authority appearing at page 33.2 to 33 thereof does not ventilate grievance of appellant. The adjudication suffers on the point of natural justice for no conclusion drawn dening opportunity to explain the discrepancy, if any.

4. On the point of limitation, appellant's contention is that adjudication is fatal being time barred. Therefore he prays that when

all the above vital issues germane, mere disposal of stay application keeping the matter pending before the Tribunal shall serve no useful purpose for which the matter may be remanded with clear direction for proper adjudication expeditiously.

5. Learned D.R. on the other hand, found difficulty to explain about the details of figures of 2003 to 2008 which were subject matter of adjudication. He equally had no matter to explain about the manner of examination of the receipts to ensure that proper taxation was made. We also perused the record and did not find any material to suggest reasons of discrepancy alleged by Revenue to raise the service tax demand. It appears that casual approach has been made in the adjudication process without mathematical exercise done to resolve the issue. The appellant appears to have given a chart to explain reconciliation as averred by the learned Counsel. Adjudication order aslo does not demonstrate the manner how figures appearing in chart were liable to be discarded. Therefore, we are of the view that the appellant has been deprived of natural justice to explain its case and the authority has also failed to demonstrate the extent of inquiry made to adjudicate the matter.

6. Our aforesaid observations when go to the root of the matter, remitting of the matter for re-examination of the issues involved is considered to be proper recourse since Revenue is not in appeal on the service tax demand of Rs.

55,83,351/- arose under Para 45(i) of the adjudication order. Accordingly we remit back the matter with following directions:-

i) The appellant shall provide month-wise detailed statement of receipts relating to respective year as appearing in page 151 of appeal folder aforesaid;

ii) Explanation on the figures shall be submitted in detail by the appellant;

iii) The appellant shall explain clearly whether figures appearing in the balance sheet differ from actual receipts or receivable. Proper reconciliation shall be done and presented to the authorities for examination;

iv) The authorities shall verify the figures submitted by the appellant and satisfy that the reconciliation of difference if any between balance sheet figures and invoice figures does not leave scope for loss of revenue;

v) By our above conclusion for remand of the matter we do not restrict power of the adjudicating authority to satisfy himself on all the relevant aspects necessary for de novo adjudication.

vi) When the appellant has grievance on the point of time bar, it shall get equal opportunity to name legal and factual pleadings on that issue in the cause of de novo adjudication.

5. The adjudicating authority granting fair opportunity of hearing to the appellant on the point of service tax demand of RS. 37,59,867/- shall pass reasoned and speaking order. In the result, stay application become infructuous and appeal is remanded to the original authority.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(SAHAB SINGH)
TECHNICAL MEMBER

RK