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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/874 /2010, ST/S/1739/10 - CU[DB] Date **25/01/2011**

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

To :
M/S VIPPY INDUSTRIES LIMITED,
28, INDUSTRIAL AREA, A-B ROAD, DEWAS.

M/S VIPPY INDUSTRIES LIMITED, Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/17/ **2011 CU[DB]** dated 21.01.11

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/29/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
MR.ASHUTOSH UPADHYAY, ADVOCATE
4, KISHAN COLONY-567,
M.G.ROAD, OPPOSITE HIGH
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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

ST/Stay No.1739/2010 in ST/Appeal No.874/2010

(Arising out of order in appeal No.IND.I/334/09 dated 31.12.09 passed by the Commissioner of Central Excise (Appeals), Indore)

Date of Hearing: 18 .1.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr. M. Veeraiyan, Technical Member

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1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982? No

2. Whether it would be released under Rule 27 of the cESTAT (Procedure) rules, 1982 for publication in any authoritative report or not? No

3. Whether their lordships wish to see the fair copy of the order? Seen

4. Whether order is to be circulated to the Department Authorities? Yes

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M/s Vippy Industries Ltd — Appellants

Vs

CCE, Indore — Respondent

Appeared for the Appellant: Shri Ashutosh Upadhyay, Advocate
Appeared for the Respondent: Shri Fateh Singh, SDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final ORDER No. ST/17/11
Stay order No. ST/29/11

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of amount of Rs.50,561/-, we take up the appeal itself in as much as the issue lies in a narrow compass. Vide his order dated 25th June, 2009, the original adjudicating authority sanctioned the refund of service tax of Rs.5,99,975/- in terms of the provisions of Notification No. 41/07-ST dated 6.10.2007 as amended in respect of the export of the excisable goods. The original authority's order was appealed against by the Revenue before Commissioner (Appeals) who vide his impugned order, upheld the order of the Assistant Commissioner but rejected a part of the refund claim of service tax paid on the testing and analysis charges on the following ground :-

"I observe that respondent produced the various commercial invoices bill/documents of Technical and Analysis services but they have not produced the copy of agreement undertaken between exporter and buyer as require in terms of Notification No. 41/2007-ST dated 6.10.2007. The condition of the said notification is mandatory but they failed to fulfill the condition of the aforesaid notification before the adjudicating authority as well as before me. Therefore, the refund claim of service tax paid on Testing and Analysis service is not admissible."

2. Learned Advocate appearing for the appellants draws our attention to the order of the Assistant Commissioner whereby he has made a categorical observation that the refund claim was duly supported by a copy of agreement entered into with the foreign buyer. As such, he submits that the observations of the Commissioner (Appeals) that no copy of the agreement was produced even before the original authority are factually incorrect.

3. Countering the arguments, learned DR submits that there is nothing on record to show that the copy of agreement produced by the assessee before the Assistant Commissioner refers to the testing and technical analysis required to be undertaken by the assessee. He

fairly agrees that the Commissioner (Appeals) is not very clear on the above issue.

4. After careful considerations of the submissions made by both the sides, we find that the dispute relates to the factual position. Though the order of the Assistant Commissioner reflects upon the fact of production of agreement before him but the terms and conditions of the agreement do not stand spell out by him in detail. In such a scenario, we would require the original adjudicating authority to examine the terms of the agreement and decide the issue afresh. We accordingly set aside the impugned order and remand the matter to the original authority for de-novo adjudication in respect of the disputed part of the refund. The appeal is remanded in the above terms. The stay petition also gets disposed of.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(M. VEERAIYAN)
Technical Member

MPS*