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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/17 /2008 - CU[DB] Date **25/01/2011**

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

To :
M/S LARDUMS ELECTRICALS PVT. LTD.

THROUGH SHRI D.R.PATHAK, MANAGING
DIRECTOR, 12, B.H.E.L., ANCILLARY ESTATE,
RANIPUR, HARDWAR, UTTARA

M/S LARDUMS ELECTRICALS PVT. LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/23/ 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**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.M.S.SHARMA
SEAT NUMBER 47, CIVIL SIDE,
TIS HAZARI COURT, 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. 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Date of Hearing : 20.1.2011

Service Tax Appeal No. 17 of 2008

[Arising out of the Order-in-Appeal No. 52-CE/MRT-I/2007 dated 15.3.2007 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut-I]

For Approval and signature :

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

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

M/s Lardums Electricals Pvt. Ltd. — Appellant

Vs.

CCE, Meerut — Respondent

Appearance :

Appeared for Appellant : Shri D.R. Pathak, M.D.
Appeared for Respondent : Shri Fateh Singh, DR

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

Final Order No. ST/23/11 dated 21.1.11

Per **Archana Wadhwa:**

Vide the impugned orders, Service Tax of Rs.1,43,912/- stands confirmed against the appellant along with imposition of penalty of identical amount under Section 78 of the Finance Act, 1994. The said demands stand confirmed on the ground that the appellant has provided repair and maintenance services to their clients by repairing the transformers.

2. The appellant had taken number of pleas including that the transformers were not immovable property; they are attached to earth; that they are in the nature of plant and machinery; that the repair and maintenance is earlier done at the site of installation etc. that the demand was also barred by limitation. However, the above pleas raised by the appellant were not found favoured with by the lower authorities and impugned orders confirming demand and imposing penalty were passed.

3. The appellant, appearing in person before us submits that they are also paying Central Excise duty on repaired transformers by treating the same as a manufacturing activity. In support of his above submission, he produced before us the Central Excise records including the returns filed by him. However, on going through the impugned order, we find that no such plea was raised before the authorities and as such there is no verification of the above factual aspect, now being pleaded before us. Inasmuch as the issue relates to the facts, we consider it fit to set aside the impugned order and remand the matter to the original adjudicating authority for examining the appellant's above plea as to whether the excise duty paid by them was in respect of repaired transformers or the new transformers. Further, if excise duty has been ~~to be~~ paid by treating the repaired transformers as manufactured transformers, whether

the Service Tax liability can be fastened by treating the activity of maintenance and repair activity. ~~Accordingly~~ However, we make it clear that ~~they~~ we are not passing any order on all other legal issues including the plea of limitation and the same are open for reconsideration by the adjudicating authority in remand proceedings. Appeal is thus allowed by way of remand.

(Dictated & Pronounced in Court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM