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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

Date **23/02/2011**

Appeal No. ST/558 /2010 - CU[DB]
ST/S/942/10

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

To :
M/S PAL CYLINDERS PVT. LTD.
AMBALA-CHANDIGARH ROAD, VPO LALRU, TEHSIL
DERA BASSI, DISTT. PATIALA.

**M/S PAL CYLINDERS PVT. LTD.** Appellant

Vs

**C.C.E. CHANDIGARH** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/48/ **2011 CU[DB]** dated 18.02.11 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/100/11

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.SUDHIR MALHOTRA**
13-R, HUKAM CHAND COLONY, NEAR
D.A.V COLLEGE, 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. 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 (Harvana)
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,
## WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

**COURT NO. IV**

**ST/Stay application No. 942/2010 in and Appeal No. 558 of 2010**

[Arising out of Order-in-Appeal No. 39/ST/Appl/Chd-II/2010 dated 18.3.2010 passed by the Commissioner (Appeals), Chd-II, Customs & Central Excise, Chandigarh].

**Date of Hearing: 18th February, 2011**

For approval and signature:

Hon'ble Shri Ashok ~~Kumar~~ Jindal, Member (Judicial);
Hon'ble Shri Mathew John, 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? | Yes |
| 2 | Whether it should 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? | No |
| 4 | Whether Order is to be circulated to the Departmental authorities? | No |

M/s. Pal Cylinders Pvt. Ltd., Appellants

Vs.

CCE, Chandigarh Respondent

Present for the Appellant :Shri Sudhir Malhotra, Advocate
Present for the Respondent :Shri Amrish Jain, SDR

**Coram: Hon'ble Shri Ashok ~~Kumar~~ Jindal, Member (Judicial)**
**Hon'ble Shri Mathew John, Member (Technical)**

Stay order No. ST/ 100/11

**FINAL ORDER NO.** ST/48/11

**Per ASHOK KUMAR JINDAL:**

The applicants have filed this appeal along with stay application against impugned order wherein demand of service tax along with interest and penalty has been confirmed under the category of "Technical Testing & Analysis Services". In the impugned order the appeal was dismissed for non-compliance of Section 35 F of Central Excise Act, 1994.

2. After hearing both sides at length we find that the issue involved is in narrow compass. Hence, after waiver of requirement of pre-deposit we find that the appeal itself can be disposed of at this stage, and therefore, after taking consent of both sides we took up the appeal for disposal.

3. The facts of the case are that the applicants are engaged in the activity of Hydro Testing of LPG cylinders pertaining to bottling plant of BPCL. For carrying out the said activity the appellants is having testing station and under a contract with BPCL they were awarded the work of testing of LPG cylinders. A show cause notice was issued to the appellants as the appellants are engaged in the activity of "Technical Testing & Analysis service". Same was adjudicated and demands were confirmed. On appeal before the appellate authority, the appellants were directed to make a pre-deposit of Rs. 3 lakhs towards service tax demand and Rs. 3 lakhs towards penalty which the appellants failed to comply. The lower appellate authority dismissed the appeal for non-compliance of the said order. Aggrieved from the said order the appellants are before us.

4. Learned Advocate for the appellants submits that the activity of Hydro testing of LPG cylinders has been done by them under Gas Cylinder Rules, 2004 and in the case of Harshita Handling vs. CCE, Bhopal, reported in 2010 (19) STR 569 (Tri.-Del.) has held that testing of gas cylinder does not fall under the category of Repair & Maintenance service, and hence, no service tax is leviable on this activity. He further relied upon the decision of Multi Tech Test

House vs. CST, Hyderabad, reported in 2010 (19) STR 532 (Tri.-Bang.). Thereafter, he prayed that after granting waiver of pre-deposit appeal may be sent to the lower appellate authority to pass the order on merit without insisting on pre-deposit.

5. On the other hand, learned D.R. submitted that the department is having a good case on merit and the appellants be asked to make some pre-deposit before remanding the matter to the lower appellate authority.

6. Heard and considered.

7. After going through the submissions made by both sides we find that in the case of Harshita Handling (supra) this Tribunal has held that testing of cylinder is statutory activity, and accordingly, service tax is not liable on that service. Same has been followed in the case of Multi Tech Test House (supra) while dealing with stay application and full waiver of pre-deposit was granted by this Tribunal. Therefore, we hold that in this case the appellants have made out pima facie case for 100% waiver of pre-deposit. Accordingly, we waive the requirement of pre-deposit of service tax, interest and penalty. We, further, find that as the lower appellate authority has not passed the order on merit, hence, the matter is sent back to the lower appellate authority to pass order on merit without insisting on pre-deposit. With these observations appeal is allowed by way of remand.

(Pronounced in the open Court)

**(ASHOK KUMAR JINDAL)**
**JUDICIAL MEMBER**

**(MATHEW JOHN)**
**TECHNICAL MEMBER**

RK