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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/54 , 57 TO 60 /2006 - CU[DB] Date **24/02/2011**

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

To :
M/S SUSHEEL YARN PVT LTD
16, RAJENDRA MARG, BHILWARA (RAJASTHAN)

M/S SUSHEEL YARN PVT LTD Appellant

Vs

C.C.E JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/49 TO 53/ 2011 CU[DB]** dated

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 JAIPUR
N.C.R BUILDING, C-SCHEME,
JAIPUR (RAJASTHAN)

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW 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)

15. M/s Satyam Synocotexd (P) Ltd
16. M/s Satyam Corporation
Bharat Complex, college Road
Bhilwara (Raj)

17. M/s Susheel Yarn (P) Ltd
16, Rajendra Marg Bhilwara (Raj)

18. Mr KK Anand, Adv
A-5 Basement Lajpat Nagar – III
New Delhi

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

COURT NO. IV

SERVICE TAX APPEAL NO. 54, 57 to 60 OF 2006

[Arising out of Order-in-Appeal No. 654-658(HKS) ST/JPR-II/2005 dated 21.11.2005 passed by the Commissioner (Appeals-II), Jaipur].

Date of Hearing: 18th February, 2011

For approval and signature:

Hon'ble Shri Ashok 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?	
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. Susheel Yarn Pvt. Ltd.,
M/s. Poddar Yarn Agencies,
M/s. Poodar Yarns Pvt. Ltd.,
M/s. Satyam Corporation — Appellants

Vs.

CCE, Jaipur-II — Respondent

Present for the Appellant :Shri S. Yadav & Ms. Sukriti Das, Advocates
Present for the Respondent :Shri Sonal Bajaj, SDR

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

FINAL ORDER NO. ST/49 to 53/11

Per ASHOK JINDAL:

These appeals have been filed by the appellants against order of service tax demand under the category of "Clearing & Forwarding Agent" for the period prior to 1st April, 2003.

2. The facts of the case are that the appellants are engaged in the business of selling of goods on behalf of their principals on the price fixed by the principals themselves. Show cause notices were issued to the appellants alleging that the appellants are performing duties of clearing & forwarding agent, hence, they are liable to pay service tax on the amount received as commission from their principals. Same were adjudicated and demands were confirmed along with interest and penalties. The lower appellate authority, on appeal, also confirmed the same. Aggrieved from the said order the appellants are before us.

3. Learned Advocate for the appellants submits that the appellants were engaged in the activity of commission agent during the impugned period as selling of goods on behalf of their principals by identifying buyers. For that activity they are receiving commission from their principals. It is not the case of the appellants that they are supplying goods to the buyers at the direction of their principals. Hence, they are not liable to pay service tax under the category of clearing and forwarding agents prior to 1.4.2003. From 1.4.2003 they are covered under the category of "Business Auxiliary Services" and are discharging their liability of service tax under that category since 1.4.2003. On the other hand, learned D.R. submits that as per agreement submitted by the appellants it is not clear whether the appellants are working as selling agent of their principals. In fact, the appellants are supplying the goods at the instruction of their principals to the prospective buyers and all the control of their activities is managed by their principals. He also relied upon Board's Circular No. 59/A/2003 dated 20.6.2003 and submits that as the appellants are engaged in both the activities i.e. commission agent as well as clearing & forwarding agent they are liable to pay service tax.

4. Heard and considered.

5. We have carefully gone through the submissions made by both sides and also perused the agreement produced before us. After going through the agreement we find that the appellants are agents of their principals and engaged in the activity of promoting sale of their principals by identifying buyers. Hence, activity undertaken by the appellants is not covered under the category of "Clearing & Forwarding Agent" during the impugned period. Although the appellants are covered under the category of "Business Auxiliary Services" which has come into service tax net w.e.f. 1.4.2003 and are discharging their service tax liability under the said category since 2003. Hence, we do not find any force in the contention of the learned D.R. and reliance on the Board's Circular which is reproduced below:-

"*Commission agent :*

As per the definition of business auxiliary services, services as commission agent are considered business auxiliary services. However services of commission agents have been exempted from service tax w.e.f. 1st July, 2003 vide notification No.13/2003-Service Tax dated 20th June 2003. Commission agent has been defined in the notification, as a person who causes sale or purchase of goods, on behalf of another person for a consideration, which is based on the quantum of such sale or purchase. It may be noticed that the exemption under this notification is for a commission agent while the services of a consignment agent remain taxable under the category of Clearing and Forwarding services. It may be appreciated that the nature of service provided by a Consignment agent is different than that provided by a commission agent. A consignment agent's job is to receive the goods from the principal and dispatch them on the directions of the principal, whereas a commission agent's job is to cause sale/purchase on behalf of another person. Thus, the essential difference is that a commission agent sells or purchases on behalf of the principal while consignment agent receives and dispatches the goods on behalf of a principal. It is possible that a person may be a consignment agent as well as a commission agent. Such a person would already be covered in the category of Clearing and Forwarding agent and would be liable to pay service tax in that category. In other words, the present exemption is available only to such commission agent who is not a consignment agent."

On perusal of the Board's Circular we find that this circular has clarified the scope of taxability under "Clearing & Forwarding Agent" but ~~does~~ is not applicable to the facts of the present case to tax services rendered by the appellants under the category of "Clearing & Forwarding Agent". Accordingly, we set aside the impugned order and allow the appeals with consequential relief, if any.

(Dictated & pronounced in the Open Court.)

(ASHOK JINDAL)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK