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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/335 /2006 - CU[DB] Date **01/03/2011**

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

To :
C.C.E JAIPUR I

NCR BUILDING, C-SCHEME, JAIPUR (RAJASTHAN)

C.C.E JAIPUR I Appellant

Vs

M/S K.K. POLYMER Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/65/ 2011 CU[DB]** dated 23.02.11 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
M/S K.K. POLYMER
424-425, 4TH FLOOR, GANPATI
PLAZA, M.I. ROAD, 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)

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

COURT NO. IV

Service Tax appeal No. 335/06

[Arising out of Order-in-Appeal No. 33(MPM)ST/JPR-I/2006 dated 16.5.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur].

Date of Hearing: 22nd 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?	

CCE, Jaipur — Appellant

Vs.

M/s. K.K. Polymers — Respondents

Present for the Appellant :Shri B.L. Soni, SDR
Present for the Respondent :Shri Mayank Garg, Advocate

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

FINAL ORDER NO. ST/65/11

Per ASHOK JINDAL:

This appeal is filed by the Revenue against impugned order wherein the lower appellate authority has set aside the adjudication order confirming the demand against the respondents. The facts of this case are that the respondents are procuring purchase orders from the prospective buyers for Reliance Industries Ltd. On such procurement of orders Reliance Industries Ltd. despatches the goods to the prospective buyers. The respondents also owns the responsibility and guarantee of payment. A show cause notice was issued to the respondents proposing liability to pay service tax under the category of "Clearing & Forwarding Agent". The impugned period is 1.9.1999 to 30.9.2002. Admittedly, during that period "Business Auxiliary Services" were not in the service tax net. The Adjudicating Authority confirmed the demand under the category of Clearing & Forwarding Agency during the impugned period but the lower appellate authority allowed the appeal of the respondents. Aggrieved from the said order Revenue is in appeal before us.

2. Learned D.R. submitted that as the respondents are procuring orders from prospective buyers of the goods and those goods have been despatched by Reliance Industries Ltd., Hence they are covered under the category of Clearing & Forwarding Agency during the impugned period.

3. On the other hand learned Advocate for the respondents submitted that the respondents are not covered under the services of Clearing & Forwarding Agent as they themselves are procuring orders from the prospective buyers for their principals (M/s. Reliance Industries Ltd.) and also owns responsibility and guarantee of payment of the goods supplied by Reliance Industries Ltd. Hence, the impugned order be upheld.

4. Heard both sides. On careful examination of the submissions made by both sides we find that service tax on Clearing & Forwarding Agency is leviable under Section 65(25) of Finance Act, 1994 which is reproduced below:-

"Clearing and Forwarding Agent" means that any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent.

From bare perusal of the said definition, we find that duties of the Clearing & Forwarding Agent are to receive the goods on behalf of their principals and store them, thereafter deliver the goods at the instructions of their principals. Admittedly, in this case it is not the situation as the respondents are procuring orders i.e. selling the goods of their principals which is not the duty of Clearing & Forwarding Agent. Moreover, the respondents are guaranteeing payment of goods sold by them on behalf of their principals which is also not the duty of Clearing & Forwarding Agent. Hence, the activity undertaken by the respondents is not covered ~~does not cover~~ under the category of "Clearing & Forwarding Agency" at all. Hence, we do not find any infirmity in the impugned order and the same is upheld. Appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(ASHOK JINDAL)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK