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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/1447/2011 - CU[DB]
ST/S/3037/11

Date **18/04/2012**

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

To :
M/S MULTI MERCANTILE CENTRE KOTA
A-VINAYAK COMPLEX, JAIN NARSHYA ROAD,
KOTA 324009

M/S MULTI MERCANTILE CENTRE KOTA Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/324/ 2012 CU[DB]** dated 06.03.12 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/S/427/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.VIJAI KUMAR (ADVOCATE)
C-2/2329, VASANT KUNJ, NEW DELHI-110070

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-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay 3037/2011
ST/Appeal No.~~3037~~/2011
1447

(Arising out of order in appeal No.274/DKV/sT/JPR.I/2011 dated 17.6.2011 passed by the Commissioner of Customs & Central Excise(Appeals), Jaipur)

Date of Hearing: 6.3.2012

For Approval and signature:

Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr.Mathew John, Technical Member

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 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?	No

M/s Multi Mercantile Centre — Appellants

Vs

CCE, Jaipur-I — Respondent

Appeared for the Appellant: Shri Vijay Kumar, Consultant
Appeared for the Respondent: Shri R.K. Gupta, AR

Coram: **Hon'ble Mr. S. S. Kang, Vice President**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/A/324/12-Cus
Stay order No. ST/S/427/12-Cus

Per Mathew John:

After hearing both sides we find that this case involves an issue which is already decided by the Tribunal in favour of the appellants. So we consider we waived the requirement of pre-deposit of dues and proceed to decide the appeal itself.

2. The Appellants are engaged in providing services of Forward Contract Broker and are a member of Multi Commodity Exchange of India, Mumbai ('MCX' for short). MCX was charging turnover charges/ transaction charges at 0.004% of the value of contract and charging it from the Appellants. The Appellants in turn were collecting such amounts from their customers over and above their commission. The issue involved in this case is whether such charges should have been included in the value of services rendered by the Appellants. The period of dispute is 01-04-08 to 31-03-09. The Appellants submit that MCX was paying service tax on the turnover charges/transaction charges levied by them and remitting the amount to the government. The contention of the Appellants is that collecting such tax again on the same amount from them amounts to double taxation. Further they submit that the charges are not for services rendered by the appellants and the appellants are only collecting the amount and remitting it to the MCX. They submit that there is no case for charging service tax on this amount from them because it is not a value of service rendered by them. They rely on the following decisions of the Tribunal in the case of charges levied by Stock Exchanges to support their argument:

(i) First Securities Pvt. Ltd Vs. CST-2007 (7) STR 690 (Tri Bang)

(ii)Vijay Sharma & Co. Vs. 2010- (20) STR 309 (LB).

3. The Ld A. R. for Revenue submits that the Appellants have not produced any evidence to show that the amounts in question have been actual amounts collected by MCX and that MCX had paid tax on such charges. It is also the submission of the AR that without taking the service of MCX, the appellant could not have provided service to the customer and the services of the MCX is an input service to the appellant so it should have formed part of the value of service rendered by them and service tax should have been paid on the value inclusive of these charges collected by them from their Customers.

4. We have considered arguments on both sides. We note that in para 9 of the decision in Vijay Sharma and Co (supra), the Tribunal observed as under:

"**9.** *It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self-same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period."*

5. The above principle is applicable in this case also. However we find that there is a need to examine the facts whether the amount collected by the appellants is equal to the amounts on which service tax has already been paid by MCX. So we remand the matter to the original authority for verification of facts. The appellants are required to submit to the adjudicating authority, the

documents based on which the appellants are making the submission.

6. The ~~appeal is~~ Stay petition and appeal are disposed of in the above terms.

(Pronounced in open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member(Technical)

MPS*