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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/1558/2011 - CU[DB] Date **24/04/2012**
ST/S/3275/11

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

To :
M/S PREM COLOR LAB (P) LTD
STATION ROAD, MORADABAD(UP)

M/S PREM COLOR LAB (P) LTD Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/333/ 2012 CU[DB]** dated 30.03.12 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/448/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.BRAHMADUTTA CHAMBERS OF LAW
111-112, G.C. COMPLEXS, NAYA BANS,
SECTOR-15, OPPOSITE NIRULA'S HOTEL, NOIDA.

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/S 3275/11 and ST/Appeal No.1558/11

(Arising out of order in appeal No.29/ST/MRT.II/2011 dated 30.6.11 passed by the Commissioner of Customs & Central Excise(Appeals), Meerut)

Date of Hearing: 30.3.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
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?	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 Prem Color Lab (P) Ltd — Appellant

Vs

CCE, Meerut — Respondent

Appeared for the Appellant: None
Appeared for the Respondent: Shri R.K. Gupta, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/A/333/12-Cus.
Stay order No. ST/S/448/12-Cus.

Per Archana Wadhwa:

On matter being called neither anybody appeared nor there is any adjournment request.

2. We find that the matter had come up earlier on record and was adjourned to today in the interest of justice. In as much as the issue involved is covered, we proceed to decide the stay petition as also appeal together after hearing the learned DR.

3. The issue is as to whether the value of consumables is required to be added in the value of photographic services being provided by the appellant. The issue stands decided against them by the larger Bench of the Tribunal in the case of Agarwal Colour Lab. As such, by following the above decision, we find that the appellant has no case on merits.

4. However, we find that the demands stands raised against the appellant by invoking the extended period. The Tribunal in the case of Centre Point Color Lab and Agarwal Photo Finish (Final Order No. ST/526-527/07 dated 14.9.2011) had occasion to deal with the said issue of inclusion of extended period and the observation is as under:-

> *"We note that the issue of limitation was considered at length in an identical matter in the case of CCE Raipur vs. Satyam Digital Photo Lab vide Final Order No. ST/503-504/11 dated 20.9.11, it was held that the notices issued beyond the period of limitation would not stand inasmuch during the relevant period, there was sufficient material for the assessee to entertain a bonafide belief that the value of raw material used would not form part of the value of services. By holding so, the matter was sent back for requantifying the demand falling within the period of limitation. The Bench further observed that on account of bonafide belief, no penalty is required to be imposed. By applying the ratio of the above decision to the facts of the present case, we hold that the demand beyond the period of limitation is time barred and no penalty is required to be imposed. Matters are remanded for re-quantifying the duty demand falling within the period of limitation, if any. While re-quantifying the duty, the claim of the appellants as regards the credit of duty/ tax paid on the raw materials is required to be considered and if found eligible, to be allowed. "*

5. In view of the above, we set aside the impugned order and also remand the matter to the original adjudicating authority with confirmation of demand within the normal limitation period. As regards the penalty, by following the above referred order, we set aside the same. The stay petition as also the appeal gets disposed of in the above terms.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)