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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/1655/2011-1657/2011 - CU[DB]
ST/S/3457-59/2011

Date **25/04/2012**

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

To :
M/S NATIONAL PRODUCTIVITY COUNCIL,
SB-96, J.L. N MARG, BAPU NAGAR, JAIPUR (RAJ.)

M/S NATIONAL PRODUCTIVITY COUNCIL, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/342-44 2012 CU[DB]** dated 20.04.12 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/468-70/12

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.BIPIN GARG, ADV
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-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)

14. M/S NATIONAL PRODUCTIVITY COUNCIL,
SB-96, J.L. N MARG, BAPU NAGAR, JAIPUR (RAJ.)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Stay Application No.3457-3459 of 2011
Service Tax Appeal No.1655-1657 of 2011

Date of Hearing / Decision : 20.04.2012.

[Arising out of Order-In-Appeal No.350-352/DKV/ST/JPR-I/2011, dated 18.08.11 issued by CCE, Jaipur)

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s National Productivity Council — Appellants
Versus
CCE, Jaipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Present for the Appellants - Shri Bipin Garg, Adv.
Present for Respondent - Shri K.K.Jaiswal, DR

Final **Order No.** ST/A/342-344/12-Cus. **Dated :**

Per Ms. Archana Wadhwa: Stay order No. ST/S/468-470/12-Cus.

After hearing both sides + dispensing with the condition of pre-deposit of duties and penalties, we proceed to decide the appeal itself in as much as the issue stands covered.

2. The appellants are engaged in providing the services of scientific and technical consultancy and are registered with the department and paying service tax on the same. The dispute in

the present appeal relates to abatement of lodging & boarding of the participants in the various conferences conducted by the appellants. It is seen that an identical dispute came up before Commissioner(Appeals) for the earlier period and vide his order dtd. 25.11.09, it was observed as under :-

> *"Hence I hold that the actual expenses incurred for boarding and lodging facility of the clients to whom the scientific and technical consultancy service was provided do not form part of gross amount for levy of service tax. Further the appellant paid service tax on the expenses incurred towards printing, postage, misc. expenses claiming the same as reimbursable expenses. The appellant has not produced any kind of writ up as how these are in the nature of reimbursable expenses and exactly where these expenses are incurred by them and whether these expenses are of optional nature. I therefore of the view that the appellant failed to make a ground for not levy of service tax on such expenses so no interference is called for in the impugned order as far as demanding of service tax on these expenses is concerned."*

3. It is seen that the Commissioner(Appeals) while passing the present impugned order took ~~take~~ note of the above order of Commissioner(Appeals) but does not follow the same on the following ground :-

> *12. The appellant has also argued that even if it is presumed that the appellant is liable to service tax, the reimbursable expenses are excludible from the gross amount. They have also argued that it has no own premises to carry out such programmes and it has no option but to run the programmes in the third premises, hotels, conference hall. They are charging*

composite fees which may be without boarding and lodging charges or including the same; that the facility of boarding and lodging is just with a view of convenience of the participants; that the participants are free to accept the boarding and lodging facility, course fee is accordingly reduced and only consultancy charges are recovered. At the time of personal hearing the authorized representative of the appellant had ensured this office to provide with the relevant details within 7 days but they did not keep their words. I am thus not inclined to consider the above argument of the appellant, hence the same is rejected. Held accordingly."

4. As is clear from the above, the Appellate Authority has not decided the issue on merits but has rejected the appeal on the ground that the appellants have not been able to provide the relevant details within the period of seven days as promised by them. Ld. Advocate appearing for the appellants submits that the failure on their part to submit such details cannot lead to rejection of appeal without deciding the issue on merits in as much as the Commissioner(Appeals) after deciding the legal issue could have sent the matter back to the original adjudicating authority for re-quantification of the demand, if any. He also clarifies that the appellants claim is only in respect of lodging & boarding activities and he is not claiming abatement on account of other expenses like printing, postage etc. He submits that if the matter is remanded to the original adjudicating authority, he will be able to provide all the relevant details.

5. Ld. DR appearing for the Revenue has no objection to the above course of action but submits that it may be clarified that

the abatement in respect of actual expenses incurred for lodging & boarding facilities of the clients would be available and not in respect of the other items as held by Commissioner(Appeals) in his earlier order-in-appeal.

6. As the only issue required to be addressed in the present appeal is as regards the re-~~assessable~~ imbursable expenses claimed in respect of lodging & boarding facilities and in as much as the said issue stands decided and as the relevant details are not available before us, we deem it fit to set aside the impugned orders of Commissioner(Appeals) and remand the matter to the original adjudicating authority for examining the above aspect in the light of declaration of law by Commissioner(Appeals) in his order-in-appeal dtd. 25.11.09. Appellants would be given an opportunity to put their case before the adjudicating authority and there ~~would~~ will be no~~t~~ unnecessary adjournment in doing so. All the stay petitions and appeals get disposed of in above manner.

(Dictated and pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

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