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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/1738-39/2011 - CU[DB] Date **16/05/2012**
ST/S/3652-53/11

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

To :
M/S YASH MOTORS,

3KM STONE, JODHRAS CHOURAHA, AJMER ROAD,
BHILWARA (RAJ.)

M/S YASH MOTORS, Appellant

Vs

C.C.E. JAIPUR II (ST/A/378-79) Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/378-79/ 2012 CU[DB]** dated 08.05.2012 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/537-38/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No. 1738-1739 of 2011

Service Tax Stay Application No. 3652-3653 of 2011

Date of Hearing/decision : 8.5.2011

For approval and signature:

Hon'ble Mr. D.N.Panda, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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? :

Service Tax Appeal No. 1738 of 2011

Service Tax Stay Application No. 3652 of 2011

[Arising out of Order-in-Appeal No. 361(CB) ST/JPR-II/2011 dated 9.8.2011 passed by the Commissioner of Central Excise, (Appeals), Jaipur]

M/s. Yash Motors — Appellants

Vs.

Commissioner of Central Excise Jaipur — Respondent

Service Tax Appeal No. 1739 of 2011
Service Tax Stay Application No. 3653 of 2011

[Arising out of Order-in-Appeal No. 273(CB) ST/JPR-II/2011 dated 16.6.2011 passed by the Commissioner of Central Excise, (Appeals), Jaipur]

M/s. Yash Motors — Appellants

Vs.

Commissioner of Central Excise Jaipur — Respondent

Appearance:

Ms. Sukriti Das, Advocate for the Appellants
Shri K.P. Singh, AR for the Respondent

CORAM:

Hon'ble Mr. D.N.Panda, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Stay order No. ST/S/537-38/12

Final. **ORDER NO.** ST/A/378-379/12

Per D.N.Panda (for the Bench):

Learned Counsel submits that they are authorised service station. Such service was construed to be Business Auxiliary service and Service Tax was imposed. The appellant did not get opportunity before the adjudicating authority to explain its case. Therefore, waiving the requirement of pre-deposit, appeal may be decided.

2. Learned representative for Revenue supports the finding of authorities below in both cases.

3. Heard both sides and perused the record.

4. We find that the appellant did not responded at all to the show cause notice and no reply to that was given for examination by the adjudicating authority. Therefore, on the basis of material on record, the authorities proceeded and the adjudication in Appeal No. 1738/2011 resulted in Service Tax demand of Rs.322,210/- and adjudication in Appeal No. 1739/2011 resulted in Service Tax demand of Rs.264,347/-. In both, the adjudications, authority imposed penalties under provisions of Finance Act, 1994. Both the demands were also followed by interest.

4. Grievance of the appellant is also that discount allowed to appellant shall not be liable to tax. We observe defiance attitude of appellant from the order of authorities below. Neither the appellant appeared before the adjudicating authority nor led defence for appropriate adjudication and authority was kept in dark to reach to proper conclusion. Following the judgement of Hon'ble High Court of Punjab and Haryana in the case of Smart Plywood and Shiv Seva Sadan vs. CESTAT, Delhi reported as [2011 (22) S.T.R. 118 (P & H)], we direct the appellant to make deposit of Rs.2,00,000/- (Rupees Two lakhs only) each in both cases within 6 weeks from today and produce both the challans before the adjudicating authority within two weeks thereafter along with application for fixation of the hearing. If the appellant so chooses, it may file reply to the show cause notice in both the cases. The authority on application shall fix the date of hearing and grant fair opportunity of hearing to the appellant as well as consider reply to show cause notice if any filed and pass

appropriate order. Since we have not touched the merits of the appeal before in order, all issues are open to the appellant to argue before the learned adjudicating authority.

5. We make it clear that in the event of default to make deposit of the amount ordered above, the appeals shall stand dismissed.

6. In the result, both the stay petitions and appeals are disposed.

(Pronounced in the Court)

(D.N.Panda)
Judicial Member

(Mathew John)
Technical Member

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