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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/492 /2008 - CU[DB]   Date **16/05/2012**

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

To :
C.C.E. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.

C.C.E. MEERUT I — Appellant

Vs

M/S PANCHSHEEL PHARMACEUTICALS (P) LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/382/ 2012 CU[DB]** dated 19.04.12 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 PANCHSHEEL PHARMACEUTICALS (P) LTD
201-B, BEGUM BRIDGE ROAD,
OPP UCO BANK, MEERUT.

2. Adv. / Consult Sri B.L. Narasimhan, Adv.
B-6/10, Safdarjang Enclave
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 19.4.2012

Service Tax Appeal No. 492 of 2008

[Arising out of Order-in-Appeal No. 111-CE/MRT-I/08 dated 28.5.2008 passed by the Commissioner (Appeals), Central Excise, Meerut]

For Approval & signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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 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

CCE, Meerut-I — Appellant

Vs.

M/s Panchsheel Pharmaceuticals (P) Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri B.L. Soni, A.R.
Appeared for Respondent : Shri B.L. Narasimhan, Advocate

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No....ST/A/382/12.....dated............

Per **Mathew John :**

The Respondents were providing services as a Clearing and Forwarding Agent. They were registered with the Central Excise department and were paying service tax on amounts received by them as commission for such activity.

2. During the audit of the records of the Respondents, Revenue noticed that during the period April 01 to Aug 05 the Respondents were recovering certain amounts in the name of office rent, manpower, postage, freight etc and were not including such amounts received in the value of services for the purpose of paying tax. They issued Show Cause Notice dated 06-11-06 demanding tax on such reimbursed amounts along with interest and penalties. On adjudication a demand for Rs. 2,07,748/ was confirmed towards tax along with interest and a penalty of Rs. 2,07,748/- was imposed under section 76 of Finance Act 1994. Aggrieved by the order the Respondents filed an appeal with the Commissioner (Appeal). The Commissioner (Appeal), set aside the adjudication order relying on the Circular B43/4/97 TRU dated 11-07-97. She also relied on the following decisions of the Tribunal,-

(i) **EV Mathai and Co** -2003 (157) ELT 101,

(ii) **Sangamitra Services Agency Vs. CCE**- 2006 (1) STR 278,

(iii) **BSR Refrigeration Ltd Vs. CST**-2006-TIOL-1541-CESTAT,

3. Revenue has filed this appeal before the Tribunal against the decision of the Commissioner (Appeal)

4. The Ld A.R. for Revenue argues that as per section 67 of Finance Act 1994, service tax is to be paid on the gross amount received by the service provider. By billing some such amounts as reimbursable expenses, a part of the consideration received cannot be kept outside the tax net. He further points out that some of the expenses like office rent, manpower, postage etc are so intrinsic to the service provided that the service could not have been provided without incurring such expenditure and treating such expenses as reimbursable expenses and keeping it outside tax net is not permitted as per the provisions of law. Revenue relies on the decision of the Tribunal in the case of **Harveen and Co. Vs. CCE** reported as 2012 (26) STR 14 (Tri-Del) in support of their case.

5. We have considered arguments on both sides. The taxability of amounts claimed as reimbursable expenses has been a matter of dispute at least till notification of Service Tax (Determination of Value) Rules in 2006. This case relates to the period 2001-02 to 2005-06. During the time CBEC itself had clarified that certain reimbursable expenses incurred by C&F Agents would not be part of the assessable value. There were also decisions of the Tribunal to that effect. Actually the issue is to be decided by the nature of such expenses as decided in the case of **Harveen and Co** (Supra). The question has to be decided considering the criterion whether ~~the~~ without incurring the expense the service could have been provided at all. In fact Rule 5 of the Service Tax (Determination of Value) Rules, 2006 gives a good guideline for deciding the matter though the Rules were notified subsequent to the period under dispute. But considering the history of this dispute we are of the view that any demand issued by invoking extended period of limitation is not sustainable in this case. Therefore we remand the matter to the adjudicating authority for re-quantifying the amount that is maintainable within normal period of limitation and following the principles indicated in the decision of **Harveen and Co**. We also hold that no penalty is imposable in this case.

6. This the appeal is allowed partially and the matter is remanded for determining the quantum of demand sustainable within normal period of limitation.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

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