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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/413 /2008 - CU[DB]

Date **21/05/2012**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S JAI MAA SANTOSHI COLOUR LAB Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/388/ **2012 CU[DB]** dated 15.05.2012 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 JAI MAA SANTOSHI COLOUR LAB
OPP
S.N.COLLEGE,KHANDWA(MP)

2. Adv. / Consult

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 : 15.5.2012

Service Tax Appeal No. 413 of 2008

[Arising out of the Order-in-Appeal No. IND-I/99/2008 dated 21.5.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

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, Indore | Appellant

Vs.

M/s Jai Maa Santoshi Colour Lab | Respondents

Appearance:

Appeared for Appellant : Shri K.K. Jaiswal, A.R.

Appeared for Respondent : None

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

Final Order No. ST/A/328/12-Cus. dated............

Per Mathew John :

None appeared for the respondent. On previous occasions also nobody had appeared. We also notice that the matter is covered by a decision of the Larger Bench of the Tribunal so the appeal was taken up and ld. AR for Revenue was heard and the appeal papers was gone through.

2. The Respondents are engaged in the business of developing photographs using chemicals. They were registered under the category of photographic services and they were paying service tax on the value declared by them to be the value of the service rendered by them. Such value did not include the value of chemically used by the Respondents for processing the films. Revenue was of the view that the value of the service will include the value of materials used for rendering the service and therefore Revenue issued a demand notice for tax not paid on such value during the period Feb. 2003 to Sept. 2004 for which tax was not paid. On adjudication, a demand of service tax of Rs.57,956/- was confirmed along with interest and penalty of Rs.57,956/- under Section 76 & 78 of the Finance Act, 1994. On appeal filed with the Commissioner (Appeals), the Commissioner (Appeals) set aside the impugned order. Aggrieved by the order of the Commissioner, Revenue has filed this appeal.

3. Revenue relies on the decision of the Tribunal in the case of **Agarwal Colour Photo Systems Vs. CCE** – 2011 (23) STR 608 (Tri.-LB). The Revenue submits that since the matter is already decided by the Larger Bench of the Tribunal in favour of Revenue the adjudication order should be restored. The ld. AR also points out that in this case Show Cause Notice was issued on 29.1.2004 for the period Feb. 2003 to March 2004 and on 15.3.2005 for the period April 2004 to Sept. 2004 and therefore there cannot be any contention that the demand is time-barred.

4. Considering that this matter is already decided against the Respondent by the Larger Bench of the Tribunal, we restore the order in original to the extent of demand of tax confirmed. However, we find that the issue involved in this case was under controversy for a long time and there were clarifications issued by CBEC as well as few decisions of the Tribunal in favour of the Respondents till the issue was settled by the Larger Bench of the Tribunal. Such being a case we find no justification for imposing any penalty on the Respondents. Accordingly, we do not impose any penalty on the Respondents.

5. Thus appeal filed by Revenue is allowed to the extent of demand confirmed in the adjudication order.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM