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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 26/03/2012

Appeal No. E/910 /2011,1079/2011 - EX[DB]
E/S/1117&1341/2011-EX

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

To :
M/S SUVIDHA SIGN STUDIOS PVT. LTD.,
92/1, BLOCK-2, W.H.S. KIRTI NAGAR, NEW DELHI.
110015

M/S SUVIDHA SIGN STUDIOS PVT. LTD., Appellant
Vs
C.C.E. DELHI I Respondent

STAY ORDER NO. 465-466/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/332-333/ 2012 EX[DB]** dated 14-3-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult SH. PRAMOD RAI, ADV, C/O
MR.ATHENA LAW ASSOCIATES
808, L & T BUILDING, SECTOR 18B, DWARKA, NEW DELHI 110075.

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
14. MR.ANOOP CHAWAL,DIRECTOR
M/S SUVIDH SIGN STUDIOS PVT LTD, 92/1, BLOCK-2,
W.H.S KIRTI NAGAR, N DELHI.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 14.03.2012

For approval and signature:

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

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?	No
4	Whether Order is to be circulated to the Departmental authorities?	No

Excise Appeal No. 910 of 2011 with E/S No. 1117 of 2011
(Arising out of order in original No.33/D-I/2010 dated 12.01.2011 passed by the Commissioner of Central Excise, Delhi-I).

M/s Suvidha Sign Studios Pvt. Ltd. Appellants

Vs.

CCE, Delhi-I Respondent

AND

Excise Appeal No. 1079 of 2011 with E/S No. 1341 of 2011
(Arising out of order in original No.33/D-I/2010 dated 12.01.2011 passed by the Commissioner of Central Excise, Delhi-I).

Anoop Chawla Appellants

Vs.

CCE, Delhi-I Respondent

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY ORAL ORDER No. 465-466/2012-EX(BR)
FINAL ORAL ORDER NO. A/332-333/2012-EX(BR)

Per: Justice Ajit Bharihoke:

Shri Pramod Rai, ld. Advocate for the appellant

2. Sh. R.K. Verma, AR present for the department.

3. With the consent of both the parties, pre-condition of deposit of duty and penalty is dispensed with. Argument on appeal heard.

4. . The appellants are contractor. They are in contract with M/s Indian Oil Corporation (IOC), M/s Hindustan Petroleum Corporation and M/s Bharat Petroleum Corporation Limited etc. for installation of retail visual identity (RVI) at various petrol pumps run by them. These retail visual identity are sign and visual indicators for the assistance of customers who visit the outlet of oil supply companies for purchase of products.

5. The proceedings are initiated against the appellants on the ground that such retail visual identity (RVI) are classified items under chapter heading 9405 6090. The proceedings resulted in passing of impugned orders confirming the demand of duty of Rs. 8,52,10,740/- and equal amount of penalty on the company besides Rs. 40 lakhs penalty on the Director. of company, namely, Anup Chawla (appellant in Appeal No. 1079of 2011). Main contention of learned Counsel for the appellants is that the demand of the Revenue is not sustainable in law for the reason that the impugned items came into existence as fixtures on the site. It is contended that for the appellants is that for the erection of RVI, duty paid inputs are purchased from the market and no movable goods come into existence. The entire process of erection is such that one by one the components are fixed at the existing structure. The RVI which comes into existence cannot be dismantled without causing damage to it and the RVI

so dismantle cannot be re-erected at any other site. It is further contended that the process of fixing installation and erection of various items to obtain Canopy Fascia, Building Cladding, Wall Cladding etc. at a specific site do not constitute manufacture as cutting, bending, welding of steel pipes, steel tubes, steel structures etc. is done as per the specification. The appellants have entered into a contract with M/s IOC, HPCL & BPCL etc. for installation of "Retail Visual Identity (RVI in short) at various petrol pumps marketing the products of aforesaid oil companies. These are boards, signages and installation visual indicators are meant to inform the customer that the products being retailed in the outlet are of the company concerned. Few of the RVI elements are Non-lit Canopy Fascia, Building Fascia, Canopy Column Cladding, Building Cladding, Spreader, Facility Sign, Directional Sign, Monolith etc. Some of these items are attached to the canopy of the petrol pump or other parts of the building and some of them are fixed to the ground. The appellants was not paying any excise duty for fabrication of RVI.

6. The Revenue was of the view that these items are manufactured items classifiable under Tariff Item 94056090 of the Central Excise Tariff and the appellants should have paid excise duty on the products fabricated by them. Thus, show cause notice was issued to the appellants demanding duty on the value received by the appellants on their customers. This show cause notice was adjudicated vide the impugned order demanding duty amounting to Rs. 8,52,10,740/- under sub-section (1) of Section 11A with interest and penalty of equal amount was imposed upon the appellants company M/s Suvidha Sign Studios Pvt. Ltd. besides

that a penalty of Rs. 40 lakhs was imposed the Director of the company Sh. Anoop Chawla who is the appellant in the second appeal.

7. Feeling aggrieved, the appellants has challenged the impugned order mainly on two counts that the erection of RVI at the specific site as per the specifications given by the party does not amount to manufacture and the RVI installation cannot be termed as goods as the RVI items come into existence as fixtures on the site and these fixtures cannot be removed without damage and cannot be used at alternative site.

8. Learned AR submits that the items manufactured and cleared from the factory of the appellants as well as the items fabricated at the site were excisable goods before those were attached to the building.

9. We may note that earlier also in Appeal Nos. 3864-3865 of 2010 similar question of facts and law came up before the coordinate Bench of this Court wherein while dealing with the issue the Tribunal remanded the matter to the original adjudicating authority subject to deposit of Rs. 40 lakhs by the appellants and while remaining the matter Tribunal laid down certain guidelines to be followed in fresh adjudication proceedings which are reproduced thus:-

> "(i) Excise duty should be demanded only on the goods manufactured and cleared and not on construction activity. The classification of the goods being cleared should be decided first. Excise duty should be demanded on the value of the goods as it is cleared and not the full value including construction work that may be needed for its installation. The adjudicating authority shall keep in mind the circular issued by CBEC vide circular Order No. 58/1/2012-CX dated 15.1.2002, and Circular No. 643/34/2002-CX (S.No.10) dated 1.7.2002 in this regard and the various decisions of the Tribunal and higher Courts in the matter and the submissions as may be made by the Appellant.
>
> (ii) The Appellant should first submit the details of goods manufactured, its classification and its value and the exemptions claimed.

(iii) If the statements of any persons are to be relied upon opportunity for cross-examining the person giving statement should be allowed.

(iv) After taking into account the submissions made by appellant the adjudicating authority shall communicate his opinion classification, eligibility for exemptions, the legal provision under which goods are proposed to be valued and a worksheet based on which revised duty liability will be finally determined. The further submissions made by appellant should be taken on record and finding on each submission should be given in the final order determining all relevant issues. A reasoned and speaking order in this regard should be passed."

10. On consideration of the submissions made by the parties and the record we are of the view that the adjudication order in the present form cannot be sustained because many issues like reliability of the statements recorded during investigation which were not tested on the anvil of cross-examination, demanding of excise duty for construction activity, inadequate justification for the classification adopted requires to be looked into. However, at the same time prima-facie, it appears that some excisable goods were manufactured and cleared. Accordingly, we set aside the impugned order in appeal and remand the matter to the original adjudicating authority for fresh adjudication in the light of above noted directions. This is subject to the appellant company depositing Rs. 50 lakhs after adjusting Rs. 25 lakhs already deposited during the adjudication proceedings.

11. The appeals as also the stay applications are accordingly disposed

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant