TELEGRAM : CEGCANAL
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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/1103/2011 - CU[DB] WITH ST/S/2327/2011 Date **21/02/2012**

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

To :
N.R. SWITCHES N RADIO PVT. LTD.
5-B-37, VIGYAN NAGAR, KOTA, (RAJASTHAN)

N.R. SWITCHES N RADIO PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I **STAY ORDER NO.ST/S/126/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/110/ **2012 CU|DB|** dated 31.01.2012 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ,
NEW DELHI 110 070

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 : 24.1.2012

Service Tax Stay No. 2327 of 2011 and Service Tax Appeal No. 1103 of 2011

(Arising out of Order-in-Appeal No.92(DKV)ST/JPR-I/2011 dated 11/18.3.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Jaipur)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s N.R. Switches N Radio Pvt. Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Appeared for Appellant : Shri Bipin Garg, Advocate
Appeared for Respondent : Shri K.P. Singh, A.R.

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

Final Order No..ST/A/110/12-Cus..dated............
Stay Order No. ST/S/126/12-Cus'

Per S.S. Kang :

The applicant filed this application for waiver of pre-deposit of duty of Rs.3,82,535/- interest and penalty. The demand is confirmed on the ground that applicant provided erection, commissioning or installation services. The brief facts of the case are that the applicants are engaged in constructing foundation of BTS stations. The applicants claimed the benefit of Notification No. 1/2006-ST dated 1.3.2006 before the lower authority and the same was denied on the ground that at Sr. No. 5 of the notification, the benefit is available in respect of the erection, commissioning or installation under a contract for supplying a plant machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment. Since the applicant did not supply any machinery or equipment the applicants are not entitled for the benefit of the notification.

2. The contention of the applicant is that the applicant is providing the service of commissioning or industrial construction service as the applicant had undertaken the activity of construction of foundation. Therefore the applicants are entitled for the benefit of the notification, at Sr. No. 7. If the benefit of notification as provided under Sr. No. 7 is allowed then there is no demand. The Revenue submitted that the benefit of notification has provided at Sr. No. 5 is rightly denied in view of the clear provisions of the notification and applicant had admitted that they had not supplied plant or machinery.

3. We find that the applicant had taken alternative plea that the applicant provided commercial and industrial construction service as per the definition of commercial or industrial service is provided under 65(25)(b) of the Finance Act 1994 means construction of a new building or civil structure or part thereof. As the applicant has undertaken the activity of construction of foundation prima facie the activity is covered

under the definition of commercial or industrial construction service. In these circumstances, the pre-deposit of dues is waived for hearing of the appeal.

4. The plea now taken by the applicant that the applicant provided industrial or construction service has not been taken before the lower authority. Therefore the impugned order is set aside and the matter is remanded to the adjudicating authority to consider the claim of the applicant in respect of classification of service and the abatement as provided under Notification No. 1/2006 at Sr. No. 7. The adjudicating authority will decide after affording an opportunity of hearing to the appellant.

(Dictated & pronounced in open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

RM

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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/1038/2011 - CU[DB] WITH ST/S/131/2012 Date **27/02/2012**

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

To :
RAMA SATELITE

BHANSALI MOHALLA, SHAJAPUR (M.P.)

RAMA SATELITE Appellant

Vs

C.C.E. INDORE **STAY ORDER NO.ST/S/131/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/111/ 2012 CU[DB]** dated 17.02.2012 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
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult MR. S.K. PAHWA,
D-75, AMAR COLONY,
LAJPAT NAGAR-IV, NEW DELHI – 24.

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
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12. Office Copy
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 15.2.2012

Stay Application No.2162 of 2011 in
Service Tax Appeal No.1038 of 2011

Arising out of the order in appeal No.IND-I/134/Appl/Ind/2011 dated 28.3.2011 passed by the Commissioner , Customs & Central Excise (Appeals-I).), Indore.

Rama Satelite .. Appellant/applicant

Vs.

C.C. & C.Ex., Indore .... Respondent

Appearance:

Shri S.K. Pahwa, Advocate for the appellant/applicant
Shri Amrish Jain, A.R. for the respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final Oral Order No. ST/A/111/12-Cus.
Stay order No. ST/S/131/12-Cus.
Per Mr. D.N.Panda:

Both sides agree that they shall co-operate with each other for verification of the document and resolve the dispute of Cenvat credit. Shri S.K.Pahwa, learned Counsel for the appellant is fair to state that in the past the Department did not call for the respective documents for verification for which controversy arose. He also says that he shall co-operate with necessary details before the adjudicating authority as early as possible.

2. Considering co-operation of the appellant as above, the appellant is directed to appear before the adjudicating authority within four weeks from the receipt of this order and produce entire evidence on that date, which it considers to lead its defence. Learned Counsel makes a prayer for personal hearing. Appellant's prayer is granted. It

should be heard in person and the matter shall be resolved by a reasoned and speaking order.

3. Since we remand the matter, we have not expressed any opinion on the merits of the case.

4. In view of the aforesaid, the stay petition and appeal get disposed.

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

scd/