14

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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/412 /2011 - CU[DB] WITH ST/CO/242/2011 Date **07/03/2012**

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

To :
C.S.T. DELHI, 17-B, I.P. ESTATE,

IAEA HOUSE, NEW DELHI.

C.S.T. DELHI Appellant

Vs

M/S LAL MAHAL LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/137/ **2012 CU[DB]** dated 27.02.2012 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
M/S LAL MAHAL LTD
(FORMERLY KNOWN AS
M/S SHIV NATH RAI HARNARAIN INDIA
LTD) B-5, BHAGWANDAS NAGAR,
NEW DELHI.
2. Adv. / Consult
MR.R.S. SHARMA, ADV.,
C-9/9656, VASANT KUNJ,
NEW DELHI 110070
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

**Service Tax COD Application No.102/2011 in
In Service Tax Appeal No.412 of 2011
with CO/242 of 2011**

CST, Delhi Appellant

Versus

M/s. Lal Mahal Ltd. Respondent

Appearance: Rep. by Shri R.K. Gupta, SDR for the appellant.
Rep. by Shri R.S. Sarma Advocate for the respondent.

CORAM : Hon'ble Shri D.N. Panda, Judicial Member
Hon'bleShri Rakesh Kumar, Technical Member

Final Order No. ST/A/137/12-Cus. Dated:7.2.2012

Per. D.N. Panda

Appeal of Revenue is to deny refund that was granted by first Appellate Authority reversing the adjudication order.

2. Shri R.K. Gupta, ld. Departmental Representative on behalf of Revenue submits that the original authority had appropriately passed the order when the refund claim was not substantiated by evidence.

2. Shri R.S. Sharma, ld. Counsel for the respondent submits that there is no dispute about the export of the goods. Availing certain taxable services, export of the goods were made. Such taxable services enabled the export. Entire tax details showing the name of the service provided, invoice no., Pan No., type of service provided, bill amount, taxable amount and service tax details, were made available to both the authorities below. Ld. Adjudicating authority, in a casual manner, disallowed the refund. Eligibility to refund is nowhere questioned. Only question is on admissibility which brought the dispute. He invited attention to the extent of examination done by the appellate authority, which clearly brought out failure of adjudicating authority to examine necessary evidence available on record. Since Adjudicating Authority passed a cryptic order, the appellate authority made exercises to pass a very detailed order. Therefore, revenue's prayer is not entertainable.

3. Heard both the sides and perused the record.

4. We find from para 5 of the impugned order that the appellate authority has made a finding about export of Rice

and use of various taxable services for occasioning the said export. Adjudicating Authority on the ground of incomplete mentioning of particular in the invoices, rejected the refund claim. But such observation was discarded by Appellate Authority recording that the chart produced by the appellant before the adjudicating authority contained necessary details required under the law. This is apparent from page 7 of the first Appellate Order. The First Appellate Authority also made a clear finding that the order in adjudication was general in nature and no specific instances of examination of invoices/bills was recorded. That authority came to an abrupt conclusion without any basis. In para 6 of the appeal order, the appellate authority noticed that had there been discrepancy in the documentation of the respondent, that should have been looked into carefully calling for evidence. There is no evidence gathered against the respondent and its bona fide did not remain in question.

5. The appellate authority examined further in para 7 observing that the chart given by the respondent also makes a reference to the bank of deposit of taxes and the

documents were complete in all respect. He further noticed that even show cause notice did not contain specific instances of discrepancies or failure to produce specific documents and lead defence. The authority also observed that rejection of refund claim without bringing out the reason why the appellant is deniable to refund remained absent in the adjudication order.

6. It appears that the Appellate Authority made an exercise to pass a speaking order by noticing the particulars were available in the detailed Chart available on record. When it is possible to notice that the dispute could possibly be resolved with the evidence available before him, who exercised co-extensive and co-terminus power, there is nothing to doubt about the claim of the respondent. Had the appeal order been cryptic and unreasoned, there would have been scope to interfere. When a reasoned and speaking order is apparent, beginning from page 1 to 14, there is no scope to intervene to the first appellate order. Thus, revenue appeal fails.

7. In view of the above, appeal is disposed of in the manner indicated above. Cross objection also stands disposed of.

[Dictated and pronounced in the open court]

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Ckp.