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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/479 /2008 - CU[DB] Date **13/03/2012**

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

To :
M/S GUPTA OVERSEAS,
NEAR TUBE COLONY,BYE PASS,AGRA.

M/S GUPTA OVERSEAS, Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/158/ 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
C.C.E. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.A.K.BATRA & ASSOCIATES
A-36, FIRST FLOOR, RAJOURI GARDEN,
RING ROAD, NEW DELHI. 110 027

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

ST Appeal No. 479 of 2008

[Arising out of Order-in-Appeal No. 94/ST/ APPL/KNP/ 2008 dated 29.2.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur.]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Gupta Overseas — Appellants

Vs.

Commissioner of Service Tax
Kanpur — Respondent

Appearance:
Shri A.K. Batra, Advocate for the Appellants
Shri Amrish Jain, SDR for the Respondent

CORAM:

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

Date of Hearing : 18.10.2011
Date of decision : 29 .02.2012

Final **ORAL ORDER NO. ST/A/158/12-Cus**

Per Archana Wadhwa (for the Bench):

The dispute in the present appeal relates to the refund of Rs.7,43,039/- filed by the applicant in respect of Service Tax paid by him on the Foreign Fashion Designers services received from outside India. As per the appellant, the said Service Tax was not payable in terms of Taxation of Services (Provided from outside India and received in India) Rules, 2006, when the services were not performed in India and fashion designers services are ~~not~~ covered under Rule 3(ii) of the Taxation of Services (Provided from outside India and received in India) Rules. Though we find that the learned advocate Shri A.K. Batra, appearing for the appellant advances number of submissions before us but we find that inasmuch as the appellant did not cause appearance before Commissioner (Appeals) and could not raise the above legal issues before him, the views of the appellate authority are not available. As such, we deem it fit to set aside the impugned order and remand the matter to Commissioner (Appeals) for fresh decision, with opportunity to the appellant to raise the above issue before him.

2. It is also seen from the impugned order of Commissioner (Appeals) that a number of opportunities were afforded by him but the appellant did not avail the same. As such, we direct the applicant to cause appearance before Commissioner (Appeals) as and when hearing date is fixed and not to seek unnecessary adjournment. The appellate authority would dispose of the matter, after observing the principles of natural justice as soon as possible.

(Pronounced in the open Court on 29/2/12)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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