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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/425 /2008 - CU[DB] Date **13/03/2012**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO.10,
INDORE 452 001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S SHITAL PRASAD CONTRACTOR Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/160/ 2012 CU[DB]** dated 06.03.2012 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 SHITAL PRASAD CONTRACTOR
AH-53, NFL, VIJAYPUR, GUNA
(M.P.)

2. Adv. / Consult Sh. Udit Jain,
A-103, Defence Colony,
New Delhi - 110024.

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)

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

Date of hearing/decision 27.02.2012

Service Tax Appeal No. 425 of 2008
(Arising out of order in appeal No. IND-I/94/2008 dated 15.05.2008 passed by the Commissioner (Appeals)-I, Central Excise & Service Tax, Indore).

CCE, Indore — Appellant
Rep. by Sh. K.P. Singh, DR for the appellant.

Vs.

M/s Shital Prasad Contractor — Respondent
Rep. by Sh. Udit Jain, Advocate for the respondent.

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

Final ORDER No. ST/A/160/12-Cus

Per: Shri D. N. Panda:

Learned DR Shri B.L. Soni appearing for the Revenue states that show cause notice brings out that the nature of activity provided by the appellant was against the work order of NFL for bagging of urea and loading the same in Wagons and trucks in the plant. That amounts to cargo handling service but no manpower supply service. Relying on the work order he says that the consideration paid to the respondent was on the basis of the quantity involved in bagging and loading. There was no manpower supply at all when work order dated 22.05.2002 is read.

2. Against the submission of Revenue, learned Counsel appearing on behalf of the respondent submitted that the learned Appellate authority has allowed the appeal before him.

3. We have examined the anxiety of Revenue from first page of the adjudication order where the case covered by the show cause notice was brought out. We agree with the learned DR about the nature of the activity depicted in the said order where work carried out is supported by the work order relied. Once the nature of the service provided is appreciable to be no manpower supply in view of the activity carried out for bagging and loading of urea, the first appellate order has no legs to stand. The controversy before the first appellate authority no where proves manpower supply but he set aside the adjudication without examination allegation of cargo handling service.

4. We do not appreciate the manner how a new case was made out by the first appellate authority in his order to grant relief to the Respondent. For the legal infirmity as above and also on the substance about the nature of the tax activity, we set aside the first appellate authority's order and allow revenue's appeal restoring adjudication.

(Dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Pant

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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/STAY/1966/2011 IN ST/944 /2011 - CU[DB] Date **13/03/2012**

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

To :
M/S PIYUSH ELECTRICAL
3, JOSHI KI GALI, NAYA KHADA, UDAIPUR.

M/S PIYUSH ELECTRICAL Appellant

Vs

C.C.E. JAIPUR I **STAY ORDER NO.ST/S/190/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/172/ 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. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.

2. Adv. / Consult MR. BIPIN GARG, ADV.
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
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12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Service Tax Stay Application No.1966 of 2011 in Appeal No.944 of 2011

Shri Piyush Electrical — Appellant

Versus

CCE, Jaipur-I — Respondent

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

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

Final Order No. ST/A/172/12-Cus Dated:9.2.2012
Stay order No. ST/S/190/12-Cus

Per. D.N. Panda

Ld. Counsel states that before issuance of the show cause notice, the service tax element was deposited but subsequent to that, interest was also deposited. Revenue agrees to this proposition. The only point on which Revenue is agitating is that there should be penalty under Section 76 of the Finance Act, 1994.

2. Against Revenue's agitation, it is submission of the ld. Advocate for the appellant that when tax was paid, no dispute arose. If at all, interest becomes payable that shall only be paid. There is no mala fide on the part of the assessee to contravene the law.

4. Hearing both sides on the submissions above, we are of the view that there was reasonable cause not to perpetuate litigation.

Therefore, to put an end to the litigation, we dispose of the appeal allowing the same and also the stay application gets disposed of.

[Dictated and pronounced in the open court]

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Ckp.