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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/1069/2011 IN ST/553 /2011 - CU[DB] Date **13/03/2012**

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

To :
M/S SHOREWALA GLOBAL INDUSTRIES PVT. LTD.,
SP-2-6, RIICO INDUSTRIAL AREA,
NEEMRANA, DISTT. ALWAR.

M/S SHOREWALA GLOBAL INDUSTRIES PVT. LTD., Appellant

Vs

C.E. JAIPUR I **STAY ORDER NO.ST/S/185/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/167/ 2012 CU[DB]** dated 01.03.2012 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SH. RAJESH SANTHALIA,
C/O. M/S SHOREWALA GLOBAL INDUSTRIES PVT. LTD.,
SP-2-6, RIICO INDUSTRIAL AREA,
NEEMRANA, DISTT. ALWAR.

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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

ST/Stay/1069/2011 in and Service Tax appeal No. 553 of 2011

[Arising out of Order-in-Appeal No. 415(DKV)ST/JPR-I/2010 dated 26.11.2010 passed by the Commissioner of Central Excise & Customs (Appeals), Jaipur].

Date of Hearing/decision: 23rd February, 2012

For approval and signature:

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

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Shorewala Global Inds. (P) Ltd., Appellants

Versus

CCE, Jaipur Respondent

Present for the Appellant : Shri Rajesh Santhalia, Adv.
Present for the respondents : Shri Amresh Jain, D.R.

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

Stay order No: ST/S/185/12-Cus.

FINAL ORDER NO. ST/A/167/12-Cus

Per D.N. Panda:

Learned Counsel mentions that mere payment of money in foreign currency does not bring the appellant to the fold of law.

2. We looked into the show cause notice, adjudication order as well as appellate order. There is no whisper about the material fact on record to bring the appellant to the fold of law. Unless the order indicates what was the service provided, where that was provided, element of taxable service whether present, quantum of consideration received for taxable service provided, if any, it is not possible to determine the liability under Finance Act, 1994.

3. Learned Adjudicating Authority proceeded taking help of section 65 (105) (zzo) of Finance Act, 1994 read with Rule 2(1)(d)(iv) of Service Tax Rules, 1994 and came to an abrupt conclusion holding that there arose liability of the appellant.

4. On the aforesaid factual matrix and lack of thorough examination, unless facts are settled it is not possible to apply any law. It is necessary that the Adjudicating Authority should first bring out the material facts and evidence on record and test the same according to the proposition of the show cause notice and decide as to whether the appellant has incurred any liability under the law applying law properly.

5. A bald order does not get sanction of law unless that is speaking and reasoned. Reading of adjudication order and appellate order does not ~~apply~~ appeal to common sense as to how

liability arose. To prevent wastage of time of Tribunal we dispense with the requirement of pre-deposit and send back the matter to the Adjudicating Authority to protect interest of Revenue.

6. We do not express any opinion at this stage since the authority shall have appropriate opportunity to call for material facts, evidences and submission of the appellant, if any, and test the same on the touch stone of law applicable.

7. In the result, stay petition is disposed and appeal is remanded.

Per Rakesh Kumar:

8. While I fully agree with the conclusion of my learned brother, I would like to point out that in this case the appellants are alleged to have received the service of business exhibition and display taxable under Section 65 (105) (zzo) of the Finance Act, 1994 from offshore service providers not having any office or establishment in India and on this basis the service tax is sought to be recovered from them under Section 66A of Finance Act, 1994 read with Rule 2(1)(d)(iv) of Service Tax Rules, 1994. In terms of Rule 3(ii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006, for the service of business exhibition taxable under Section 65 (105(zzo) to have been imported into India i.e. received by a person in India from an offshore service provider the service should have been performed in India and for this purpose, service even partly performed in India will be treated as performed in India. The

question as to whether a particular taxable service provided by an offshore service provider not having usual place of residence/permanent address in India, has been received by a person having fixed establishment/permanent address/usual place of residence in India, or in other words, the service has been imported ~~in~~ into India, has to be decided on the basis of the Rules framed in this regard by the Government i.e. Taxation of Service (provided from India and received in India) Rules, 2006. But the provision of these Rules have nowhere been discussed in the impugned order. Though the Appellant have pleaded that the services, in question, were entirely received abroad i.e. place of performance was entirely abroad and, hence, there was no receipt of service in India, there is no finding on this point by the Commissioner (Appeals) or original adjudicating authority. Since, for the service, in question, covered under clause 65 (105) (zzo), to be treated as imported into India, the same must be fully or partly performed in India and if the service has been entirely performed abroad, the same cannot be treated as imported ~~in~~ into India in terms of Taxationof Services (provided from outside India and received in India) Rules, 2006, Section 66A of Finance Act, 1994 and Rule 2(1)(d)(iv) of Service Tax Rules, 1994, would not be applicable. In de-novo proceedings, the original adjudicating authority must, therefore, give specific findings on the following points:-

(1) Was the service which is sought to be taxed, performed fully or partly in India or was performed fully abroad.

(2) Whether on the basis of place of performance, the service, in question can be treated as having been received by the Appellant in India, from offshore service provider in terms of Taxation of Services (Provided from outside India and received in India) Rules, 2006.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK