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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/645 /2007 - CU[DB] Date **13/01/2012**

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S RAM SHIV INDUSTRIES LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/28 2012 CU[DB]** dated 13.09.12 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 RAM SHIV INDUSTRIES LTD
367, INDUSTRIAL AREA, PHASE-
II, RANIA, KANPUR DEHAT.

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

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.

DIVISION BENCH
Court No.3
Service Tax Appeal No.ST/645/2008
(Arising out of Order-in-Appeal No.313-ST/APPL/KNP/2007 dt.13.09.07 passed by the CCE(A), Indore)

Date of Hearing: 13.09.2011
Date of decision: 13.09.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, Member (Technical)

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

CCE, Kanpur — Appellant
Vs
M/s.Ram Shiv Industries — Respondent

Present for the Appellant: Shri Natesh Pathak, SDR
Present for the Respondent: None

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Final **ORDER NO.** ST/A/28/12-Cus-

PER: ARCHANA WADHWA

Being aggrieved with the order of the Commissioner (Appeals), the Revenue has filed the present appeal. We have heard learned SDR. Nobody appeared for the respondent.

2. For better appreciation of the reasoning adopted by the Commissioner (Appeals), we reproduce the relevant part of the order, which reads as follow:-

"I find that the "Clearing and Forwarding Agents" have been defined under Clause 25 of Section 65 of the Act as 'any person who is engaged in providing any service, either directly or indirectly in connection with the clearing and forwarding operations in any manner at any other person and includes a Consignment Agent'. A minute analysis of the definition reveals that to merit classification of service under the head of C&F Agent, the service should be provided in connection with the operation undertaken to clear and forward the goods. The nature of operations normally undertaken by Clearing and Forwarding Agents has been broadly spelt out by the Larger Bench in the case of Larsen & Toubro Ltd. vs. CCE[2006 (3) STR-321].

I find that the appellants were receiving commission from their principals only for procurement of supply orders. The definition of C&F Agent Emphasizes on the existence of relationship agency in the of clearing and forwarding jobs, which clearly lacks in the case of appellants, who have not been appointed as C&F Agents by the recipient of service. Unless the service can be treated as one provided to a client by a Clearing and Forwarding Agent in relation to clearing and forwarding operations in any manner, the appellant cannot be covered under the category of "Clearing and Forwarding Agents".

It is further observed that controversy in this regard has been put to rest by the larger bench of CESTAT in the case of Larsen & Toubro Ltd. vs. CCE[2006 (3) STR-321 (Tri.-LB)] by holding that person engaged in mere procurement of orders on commission basis is not covered under the clearing and forwarding operations. I take cognizance of the same and hold that mere procuring of orders by an agent on commission basis would not amount to providing services of C&F Agent, within the meaning of Section 65(25) of the Finance Act, 1994. Hence, from the above, it is held that the activities of *appellants were not covered under the category of "Clearing and Forwarding Agents".*

The appellants have placed reliance on CBEC Circular No.59/8/2003 dt.20.6.2003, which clearly distinguishes the activities of commission agents and consignment agents/C & F Agents. I have gone through the said Circular and I find that ait is relevant in this case. By now, it is a settled law that the circulars issued by the CBEC are binding on the departmental officers.

I have also gone through the definition of "Business Auxiliary Services" as given under clause 19 of section 65 of the Act, wherein the persons who are rendering any service on a commission basis for selling the goods or service of the principal, have been made liable to pay the service tax. I observe that the activities undertaken by the appellants as a commission agent are covered in the category of "Business Auxiliary Services" only."

3. The Revenue's contention in their memo of appeal is that the larger bench decision of the Tribunal in the case of Larsen & Toubro Ltd. was prior to another decision of the larger bench of the Tribunal in the case of Medpro Pharma Pvt.Ltd.-2006 (3) STR 355 (Tri.-LB) wherein it was held that any of the two services i.e. either clearing and forwarding provided by a person would get covered under the C&F agency.

4. We find that the decision of the larger bench of the Tribunal in the case of Medpro Pharma Pvt.Ltd. relied upon by the Revenue stands overruled by Hon'ble Punjab and Haryana High Court in the case of CCE, Panchkula vs. Kulcip Medicines (P) Ltd.-2009 (14) STR 608 (P&H). The said decision of the Hon'nble High Court stands confirmed by the Hon'ble Supreme Court, when the appeal filed by the Revenue, which was rejected, ~~as reported in~~ ________________.

- In view of the above, find no merit in the Revenue's appeal and [illegible] same is accordingly rejected.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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