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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/379 /2009 - CU[DB] Date **24/01/2012**

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

To : M/S DELTA CONSULTANTS,
K-55, JANGPURA EXTENTION,
NEW DELHI-110044.

M/S DELTA CONSULTANTS, Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/73/ 2012 CU[DB]** dated 20.01.2012 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.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 17/01/12.

Service Tax Appeal No. 379 of 2009

M/s Delta Consultants — Appellant

Versus

CST, Delhi — Respondent

Appearance

S/Shri A.K. Batra and P. Shukla, Advocates – for the appellant.

Shri K.K. Jaiswal, Authorized Representative (SDR) – for the Respondent.

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

Final Order No. ST/A/73/12-Cus Dated : 17.1.2012

ORDER

Per. D.N. Panda :-

Shri Batra, learned Counsel submits that there were three contracts executed with three respective parties namely viz. Xerox Modicorp Ltd., Havell's India Ltd., Zim Integrated Shipping Services India Pvt. Ltd. The amount received in respect of each such work done can be appreciated from the work orders placed by those parties which are placed in the paper book and such documents were also available during adjudication stage. The receipt made in respect of each one was also provided to

Adjudicating Authority to examine incidence of tax for each such work. There is no threadbare examination of scope of each work order done to come to a conclusion whether a receipt therefrom shall be liable to service tax and if so, in what manner incidence of taxation arose. It was also submitted that wherever goods are involved that shall enjoy the abatement since the appellant has maintained proper book of accounts and furnished full set of figures. In addition to that the date of amendments to different provisions of the law touching taxation of works contract service is also to be given due regard including the meaning of the sale as that is appearing in Central Excise Act, 1944 readwith relevant provisions of Section 65 (121) of Finance Act, 1994. If a detailed examination is carried out on the basis of material on record, the appellant shall get fair justice.

2. Learned Representative fairly agrees that each and every contract was not examined threadbare. But the sum and substance of the contracts were examined in the order.

3. We have perused the discussion and finding portion of the order. While we appreciate that the authority has framed issues in para 21 of the order, that authority has failed to examine incidence of tax in respect of each contract that was listed in a table under paragraph 7 of the adjudication order. The authority simply discussed law in the impugned order for arriving at his conclusion without testing the facts of the case of the appellant relating to each contract under touch stone of law.

4. We may state that taxation of contracts and determination of assessee value thereof has been dealt by Tribunal elaborating in **Aggarwal Colour Advance Photo System vs. CCE, Bhopal** reported in **2011 (23) S.T.R. 608 (Tri. – LB)** and in **Alstom Projects India Ltd. vs. CST, Delhi** reported in **2011 (23) S.T.R. 489 (Tri. – Del.)** and in **Instrumentation Ltd. vs. CCE, Jaipur – I** reported in **2011 (23) S.T.R. 221 (Tri. – Del.)**. We do not say that the appellant may be simply dealt by those orders because law has been settled by Tribunal according to the proposition made therein. But those may provide guideline and what it expected is that the Adjudicating authority shall do re-adjudication afresh keeping in view the following :-

(i) each and every contract is to be examined threadbare to find out taxable component of the services provided by such contracts and value thereof ;

(ii) it is required to be ascertained to what extent a contract is liable to service tax for the features present in the said contract ;

(iii) the amount involved in respect of each contract distinctly showing the amount liable to tax with reason is to be stated;

(iv) abatement, if any, permissible under law is to be granted on the basis of the evidence ;

(v) entire evidence that shall be placed by the appellant during course of re-adjudication shall be tested with the fact settled in respect of each contract.

(vi) All legal pleadings are open to Appellant in the course of fresh adjudication.

(vii) The appellant is entitled to fair opportunity of hearing and to adduce admissible evidence for its defence.

5. We make it clear that law does not approve an abrupt conclusion simply stating the provisions of the law in the adjudication order. The law applicable should be clearly brought out to test the material facts governing the issue and the appellant should be exposed for rebuttal in the course of fresh adjudication.

6. We expect the exercise of re-adjudication to be completed within three months of receipt of this order, since the appellant was directed in the course of stay hearing to make a pre-deposit and that has been done. So also, the appellant has filed plethora of documents which shows appellant's cooperation and preparedness for completion of re-adjudication expeditiously. Therefore, without loss of time, to protect interest of Revenue, both sides should cooperate for completion of re-adjudication within the time frame aforesaid.

7. In the result, the matter is remanded to Adjudicating Authority for expeditious disposal.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK