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TELEGRAM : CEGCANAL
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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/S/1905/2011 IN ST/899 /2011 - CU[DB] Date **20/03/2012**
ST/S/1906/2011 IN ST/900/2011

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

To :
SHRI PREMLAL BARMAN, MAIN ROAD,
NAVROZABAD, DISTT- UMARIYA(MP)

SHRI PREMLAL BARMAN Appellant

Vs

C.C.E BHOPAL **STAY ORDER NO.ST/S/287-288/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/238-239/ 2012 CU[DB]** dated 08.02.2012 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 BHOPAL
HOSHANGABAD ROAD,
48, ADMINISTRATIVE AREA,
AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MISS ASMITA A.NAYAK,ADV
D/619, IST FLOOR, C R PARK,
NEAR MARKET NO 2, 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
14. SHRI ABADH KISORE SHARMA,
VINDHYA COLONY, NAVROZABAD,
DISTT. UMARIYA, M.P.

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 : 08/02/12.

Service Tax Stay Application No. ST/S/1905 of 2011 in Appeal No. ST/899 of 2011

Shri Premlal Barman Appellant

Versus

CCE, Bhopal Respondent

Appearance

Ms. Asmita A. Nayak, Advocate – for the appellants.

Shri B.L. Soni, SDR – for the Respondent.

Service Tax Stay Application No. ST/S/1906 of 2011 in Appeal No. ST/900 of 2011

Shri Abadh Kishore Sharma Appellant

Versus

CCE, Bhopal Respondent

Appearance

Ms. Asmita A. Nayak, Advocate – for the appellants.

Shri K.K. Jaiswal, SDR – for the Respondent.

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

Stay order No. ST/S/287-288/12-Cus
Final **ORDER NO.** ST/A/238-239/12-Cus. **DATED :** ________

PER. D.N. PANDA

Learned counsel mentions that both the appeals have similar facts and if appeal record in ST-899/2011 is taken up for reading of scope of work in question, the same demonstrates that the services provided ~~were~~ was of construction in nature without being repair and maintenance. Once the activity is classified as industrial and construction service, law shall apply on its own field. There was no repair and maintenance at all done which is appreciable from appeal folder.

2. To the aforesaid submission, Revenue states that the activity carried out was repair and maintenance.

3. Heard both sides and perused records.

4. Both the matters although were listed for stay hearing today, looking to the magnitude of demand and also looking to the nature of dispute, we do not propose to keep these appeals pending in Tribunal. Therefore, dispensing requirement of pre-deposit in both the cases, we remit the matter back to the learned Adjudicating Authority to re-adjudicate the matter afresh taking following aspects into consideration :-

(i) the work order which is subject matter of controversy is to be threadbare analysed to come to conclusion about the nature of activity carried out ;

(ii) it should be categorically made clear whether the nature of the activity is of repair and maintenance of an existing asset or resulted in creating a new asset or structure since law applies differently in different circumstance depending on the finding ;

(iii) Wherever there is any concession permissible under law that should not be hesitated to be granted.

5. We make it clear to the Adjudicating Authority that in the meantime Tribunal has already delivered its judgment on the leviability of service tax on works contract in cases like **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.)**. Therefore, the authority shall taking into consideration all the averments of the appellant with evidence before him pass a reasoned and speaking order bringing out clearly the levy, if any, under law.

6. The appellant is directed to appear before the Adjudicating Authority within a month of receipt of this order and make application for fixation of date of hearing.

7. In the result, the stay applications and appeals get disposed in the manner indicated above.

(Dictated and pronounced in the Open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita