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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/557 /2007 - CU[DB] Date **29/03/2012**

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

M/S JAYPEE REWA PLANT Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/255/ 2012 CU[DB]** dated 14.03.12 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 JAYPEE REWA PLANT
(A UNIT OF JAIPRAKASH
ASSOCIATES LTD.) JAYPEE
NAGAR, REWA (M.P)

2. Adv. / Consult : Mr. B.L.Narasimhan, Adv
B-6/10, Safdarjung Enclave
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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 557 of 2007

[Arising out of Order-in-Appeal No. 31-ST /BPL/2007-2008 dated 10.7.2007 passed by the Commissioner of Central Excise, Bhopal]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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

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Commissioner of Central Excise Bhopal — Appellants

Vs.

M/s. Jaypee Rewa Plant — Respondent

Appearance:

Shri Amrish Jain, DR for the Appellants
Shri B.L. Narasimhan, Advocate for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 14.03.2012

Final **ORAL ORDER NO .** ST/A/255/12-Cus

Per Archana Wadhwa (for the Bench):

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard both sides.

2. The short issue required to be decided in the present appeal is as to whether the appellant is liable to discharge the Service Tax liability as recipient of Clearing and Forwarding agent services during the period Post Mach, 1998. The Commissioner (Appeals), after taking into consideration the precedent decisions of the Tribunal in the case of CCE vs. DCW Ltd. [2006 (1) STR 298 (Tri-Chennai) has held that retrospective amendment in Section 116 of the Finance Act 2000 was to make recipient of clearing and forwarding service retrospectively liable for payment of Service Tax on such service for specified period from 16.7.1997 to 16.10.1998. The revenue cannot assume authority to collect Service Tax from a recipient of services for the period beyond 16.10.98 in terms of Section 117 of the Finance Act which only deal with the procedure.

3. He also observed that the Misc. application filed by the Revenue for rectification of mistake also stands dismissed by the Tribunal as reported in [2007 (6) STR 144 (Tri-Chennai)].

4. As against the above Revenue in their memo of appeal has not contested the applicability of the above decision of the Tribunal but have only submitted that the said decision has not been accepted by the Department and appeal against the same has been filed in Madurai Bench of Madras High Court. However, there is nothing on record to show that the Tribunal's decision stand stayed by the Hon'ble High Court. Further, the reliance on the Hon'ble Supreme Court decision in the case of Gujarat Ambuja Cement Ltd. [2005 (182) ELT 33 (SC)] already stands discussed by the Tribunal in the case of DCW Ltd. referred supra and has been held as not applicable. As such, we find that as the issue stands decided by the precedent decision of the Tribunal, nothing survived in the present Revenue's appeal. The same is accordingly rejected.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

ss