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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/558 /2008 - CU[DB] Date **29/03/2012**

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

To :
M/S KOTDWAR STEELS PVT. LTD.

JASODHARPUR INDL. AREA, KOTDWAR, DISTT.
PAURI GARHWAL (UTTARAKHAND)

M/S KOTDWAR STEELS PVT. LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/264/ **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
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.AALOK ARORA, ADVOCATE
82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)

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. 558 of 2008

[Arising out of Order-in-Appeal No. 132-CE /MRT-I/2008 dated 30.6.2008 passed by the Commissioner of Central Excise, Meerut I]

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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M/s. Kotdwar Steels (P) Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut I — Respondent

Appearance:

Shri Alok Arora , Advocate for the Appellants
Shri K.P. Singh, DR 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/264/12-Cus**

Per Archana Wadhwa (for the Bench):

The appellants are engaged in the manufacture of MS ingots. In addition, they are also engaged in trading activities carried out on behalf of their client on commission basis. Revenue by entertaining a view that the commission earned by the appellant from their clients is covered under the activity of C & F agent services, issued a show cause notice on 17.2.05 proposing confirmation of Service Tax of Rs.3,48,899/- for the period 2000-2001. The said show cause notice culminated into an order passed by the adjudicating authority confirming the tax as also imposing penalties under various section of the Finance Act, 1994.

2. As against the above order, the appellants filed an appeal before Commissioner (Appeals). It was contended by them that they were procuring orders for their clients on commission basis and were not dealing with the goods on behalf of their clients. As such, the activity carried out by them could not be covered by C & F agent services. They also contended that the reliance by the lower authorities on the Tribunal's decision in the case of Prabhat Zarda Factory [2002 (50) RLT 326

(CESTAT – Kol.)] was not correct inasmuch as the said decision stands over-ruled by the Larger Bench decision of the Tribunal in the case of L & T vs. CCE, Chennai [2006 (3) STR 321 (Tri-LB)]. The appellate authority however, by observing that the adjudicating authority has not followed the judgement of the ~~principle~~ larger Bench due to failure on their part to submit copies of agreement that they entered into with their client. He further observed that inasmuch as the appellants have failed to produce any documentary evidence such as copy of agreement with their client showing the exact nature of the work carried out by them, the appeal was dismissed by the ~~adjudicating~~ first appellate authority. Hence, the present appeal.

3. After hearing both the sides, we really fail to understand the reasoning adopted by Commissioner (Appeals) for rejecting the appeal. Failure on the part of the assessee to produce agreement copies cannot result in confirmation of demand. The facts have to be seen. It is the Revenue who has alleged the activities of the appellants as C & F agent activities and as such onus is upon them to show that the said activities are covered under the said category.

In any case, we find that the show cause notice very clearly mentions that the appellant is engaged in trading activities on behalf of their client and are charging commission from their clients. The notice proposes to hold the said activity of trading as falling under C & F category. ~~Whether on~~ We find that definition of C & F agent as is given under

Section 65 ~~68~~ (25) of Chapter V of the Finance Act, 1994 refers to the activities which are much more that the mere procurement of orders for the clients on commission basis. The Circulars issued by the Board, on the basis of which trade notice were issued by various Commissionerates, details the said activities as covering receiving of the goods from ~~principle~~ principal, warehous~~ed~~ing the goods received, dispatching the goods from the ~~principle~~ principal, arranging dispatch of goods as per the directions of the ~~principle~~ principal, maintaining record of receipt, dispatch of the goods and stock available at the ware house and preparing facts on behalf of the ~~principle~~ principal. As such, it is seen that the definition covers various activities required to be undertaken by C & F agent and mere procurement of orders on commission basis, by itself would not get covered under the clearing and forwarding agent services. There is no allegation in the show cause notice to the effect that the appellant ~~is~~ was undertaking such activity on behalf of their client.

4. We find that the scope of Clearing and Forwarding agent service was the subject matter of Tribunal's Larger Bench decision in the case of Larsen and Toubro vs. CCE, [2006 (3) STR 321 (Tri-LB)]. It was held that the expression 'directly or indirectly' and 'in any manner' in the definition of 'Clearing and Forwarding Agent' services is not to be isolated from the activity of C & F operations. And after taking into consideration the definition as also the Board's Circular, it was held that

principal

mere booking of orders for the ~~principle~~ by an agent on commission basis is not covered under C & F agent services.

5. In view of the above, we set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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