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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/431/2012-CU[DB], ST/S/953/12

Dated: **22/06/2012**

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

**GREENVIEW LAND & BUILDCON LTD**
SCO 854, NAC, MANIMAJRA,
CHANDIGARH

**Greenview Land & Buildcon Ltd** (Appellant)

**VS**

CCE CHANDIGARH – II (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/475/2012-CU[DB]** dated **30/05/2012** and Stay/ No. **ST/SO/710/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**Copy To,**
1. **Respondent**

2. **Advocate(s) / Consultant(s):**
ABHISHEK JAJU,ADVOCATE
F-78,FF,LAJPAT NAGAR-II, NEW
DELHI-24

3. **C.D.R**
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, NEW DELHI**
**Court No.II**

**ST/Stay No 953/2012 in ST/A No.431/2012**

(Arising out of order in appeal No.219/ST/Appl/CHD.II/11 dated 4.1.2012 passed by the Commissioner of Customs & Central Excise(Appeals), Chandigarh)

Date of Hearing: 30.5.2012

For Approval and signature:

Hon'ble Mr. D.N. Panda, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?

3. Whether their lordships wish to see the fair copy of the order?

4. Whether order is to be circulated to the Department Authorities?

M/s Greenview Land & Build con Ltd — Appellants

Vs

CCE, Chandigarh-II — Respondent

Appeared for the Appellant: Shri Abhishek Jaju, Advocate
Appeared for the Respondent: Shri K.P. Singh, SDR

Coram: **Hon'ble Mr D.N. Panda, Judicial Member**
**Hon'ble Shri Mathew John, Technical Member**

Final ORDER No. ST/A/475/12-Cus
Stay order No. ST/S/710/12-Cus

Per D.N. Panda:

On the previous occasion, there was direction to find out service of adjudication order. The appellant was given hearing by the learned Commissioner (Appeals). In para 7 of the order, he has recorded the relevant part as under:

*"In the instant case, the Revenue has brought on record the said report of postal department as proof of actual delivery of the said registered letter to the addressee. The copies of the postal delivery report and dispatch register were supplied to the appellants at the time of personal hearing but the said report of postal department has not been disputed by the appellants and also that it is not a case where the appellants have shifted from the said premises to which the said letter was addressed and delivered. I also find that other correspondence such as show cause notice and orders issued to the appellants during the corresponding period 2007-08 and 2008-09 were served upon them at the same address and there was no dispute regarding service of the said orders etc in other cases. Considering the facts on record, the impugned order has been valid served to the appellants on 3.1.08 as per the ratio of the above decision of larger bench in Marga Industries Ltd and also as per the provisions of section 37-C of the Central Excise Act, 1944.*

2. Learned Counsel says that there is an affidavit filed by the Director of the appellant indicating the persons on whom service of adjudication order was made. Appellant had no authorized person. Therefore, the above finding at page 3 of the appellate order is baseless.

3. We have perused the adjudication order resulting in demand of service tax of Rs. 19,10,774/-. Normally a Revenue officer shall not remain silent to recover demand without serving adjudication order giving rise to certain demand. No laxity on the part of adjudicating authority is apparent in this case.

4. Learned DR invites attention to page 55-56 of the appeal folder to demonstrate that the registered letter was addressed to the appropriate address and delivery thereof was confirmed by the postal department in terms of evidence they sent to the adjudicating authority. Bonafide of the Revenue officer is established from such communication and in absence of any malafide or any cogent evidence to the contrary brought on record, his action cannot be questioned. There was proper service of the impugned order made by the adjudicating authority in accordance with law.

5. Learned Counsel relies upon the judgment of Allahabad High Court in the case of R.K. Agarwal Vs CESTAT New Delhi 2008 (221) ELT 486 (All) to submit that there was no service of adjudication order. We have noticed that Hon'ble High Court of Allahabad in para 11 of the judgement found that there was nothing on record to establish that the petitioner in that case authorized anybody to receive the copy of the adjudication order. Accordingly, receipt of the adjudication order by authorized signatory could not be proved but that is not the case here.

6. The appellant also relied on the decision in the case of Matigara Rolling Mills P Ltd Vs CCE Siliguri 2006 (193) ELT 132. This is a case where letter was sent to a factory which was under closure and closure was within the knowledge of the department. Such factual aspect is not in the present case.

7. The appellant also relied on the judgement in the case of CCE Indore Vs R.R. Tea Company & Another 1987 (31) ELT 728 . This is a case where presumption of service in the normal course of article

dispatched by post is rebuttable. We agree with the principle. But nothing could be rebutted. in the present case.

8. We are guided by the judgment of Hon'ble High Court of Punjab & Haryana in the case of CCE, Ludhiana Vs Mohan bottling Co (P) Ltd 2010 (255) ELT 321 where it was held that it is for the assesse to rebut presumption of service by cogent evidence that in fact order was never served upon him. Order of Larger Bench of the Tribunal passed on 28.8.2006 in favour of the respondent was reversed by that judgment. Larger Bench of Tribunal in that case had held that dispatch of adjudication order by speed post/registered post would not amount to a valid service in the absence of proof of actual delivery of speed post. Thus according to judgment of Hon'ble High Court of Punjab & Haryana in Mohan Bottling Co (supra), it can safely be said that sending the order at correct address by registered post is a sufficient compliance of section 37-C of Central Excise Act, 1944 and it is for the assesse to rebut the presumption of service by cogent evidence that in fact order was never served upon him. The appellant in the present appeal in hand failed to discharge its burden of proof. we are able to notice this is a case of service not on any authorized person, nor the case of closure of factory nor the case of rebuttal of presumption of by appellant. Thus both stay application and appeal fail to succeed. Accordingly both are dismissed.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member Technical
MPS*

(D.N. PANDA)
Member Judicial