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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/301 /2006 - CU[DB] Date **27/06/2012**
ST/302-03/06

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

To :
M/S AGRAWAL COLOUR ADVANCE PHOTO SYSTEM
736, RUSSEL CHOWK, MAHAVIR COMPLEX,
JABALPUR (M.P.)

M/S AGRAWAL COLOUR ADVANCE PHOTO SYSTEM Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/481-83/ 2012 CU[DB]** dated 07.06.12 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.)

462011

2. Adv. / Consult
MR.V.LAKSHMI KUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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. M/S Agarwal colour Photo Industries
opp. Kesarwani college.
1053, Gole Bazar
Jabalpur. (m.p.)
15. M/S Agarwal colour Quick System.
739, Marhatal. ~~Jabalpur.~~
Jabalpur. (MP)

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 7.6.2012

For Approval & signature :

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Service Tax Appeal No. 301 of 2006

[Arising out of the Order-in-Appeal No. 32/ST/BPL/2005 dated 17.4.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal)

M/s Agrawal Colour Advance Photo — Appellant

Vs.

CCE, Bhopal — Respondent

Service Tax Appeal No. 302-303 of 2006

(Arising out of Order-in-Appeal No.31-CE/BPL/2006 dated 17.4.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal)

M/s Agrawal Colour Photo Industries — Appellants
M/s Agrawal Colour Quick Systems

Vs.

CCE, Bhopal — Respondent

Appearance:

Appeared for Appellant : Shri Manish Gaur, Advocate
Appeared for Respondent : Shri Sumit Kumar, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. ST/A/481-483/12-Cus dated............

Per **Archana Wadhwa** :

All the three appeals stand listed before us for passing the final orders, in view of the reference of legal issue answered by the Larger Bench of the Tribunal in the same appellant's case.

2. Ld. Advocate appearing for the appellant agrees that the said reference stand answered by the Larger Bench against them. He also agrees that the demand is within the period of limitation and as such submits that the demand is required to be confirmed. However, he submits that inasmuch as the issue was not free from doubt ~~there~~ as there were earlier decisions of the Tribunal, which were in favour of the appellant and which stands overruled by the Larger Bench, the penalty imposed upon the appellants under various sections are to be set aside. For the above proposition, he also relied upon the decision in the case of **Shobha Digital Lab Vs. CCE** – 2011 (24) STR 430 (Tri.-Del.).

3. After hearing ld. AR Shri Sumit, we find that the Tribunal in the above referred judgement in the case of **Shobha Digital**

Lab has held that on account of the earlier decisions of the Tribunal in favour of the assessee, no malafide can be attributed to them and as a consequence no penalty is required to be imposed in terms of provisions of Section 80 of the Finance Act, 1994.

4. In view of the above, we confirm~~ed~~ the demand with interest in terms of declaration by law of the Larger Bench decision. However, penalty imposed in all the three cases under various sections of the Finance Act 1994 is set aside. All the three appeals are disposed in the above manner.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM*