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/1090/2011-CU[DB]
: ST/S/2284/11

Dated: **03/07/2012**

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

GOVIND TRADING AGENCY
A-16-17, SUBHASH NAGAR,
SHOPPING CENTRE, JAIPUR(RAJ)

GOVIND TRADING AGENCY (Appellant)

VS

C.C.E. JAIPUR I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/494/2012-CU[DB]**, Stay/ Order No. and **ST/SO/750/2012** dated **22/06/2012** 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
C.C.E. JAIPUR I
N.C.R.Building, Statue Circle, "C"
Scheme, jaipur 302005.

2. Advocate(s) / Consultant(s):
SANJEEV KUMAR MISHRA
166, BLOCK A, MODI NAGAR, AJMER
ROAD, PURANEE, CHUNGEE,
JAIPUR-302019

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)
custom Branch.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Stay Application No.2284 of 2011
Service Tax Appeal No.1090 of 2011

[Arising out of Order-In-Original No.147/DKV/ST/JPR-I/2011, dated 11.04.11 issued by CCE, Jaipur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
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?	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

M/s Govind Trading Agency — Appellants
Vs.
CCE, Jaipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri Jatin Mahajan, Advocate for the Appellants
Shri K.K.Jaiswal, AR for the Respondent

Date of Hearing/decision : 22.06.2012

Final **ORDER NO . ST/A/494/12-Cus**
Stay order No. ST/S/750/12-Cus

Per Ms. Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty and penalty, we proceed to decide the appeal itself with the consent of both sides.

2. Appellant is a edible oil broker working on the basis of commission. The said service was brought under the service tax net w.e.f. 01.07.03 but exempted upto 08.07.04. The appellant got himself registered with the service tax department on 20.10.04 and started paying service tax on the commission received by him.

3. The appellant was issued a Show Cause Notice (SCN) on 20.08.08 raising demand for the period 2003-06 on the allegations that there is huge gap between the commission received by them as reflected in the ST-3 returns and as reflected in theu balance sheet. The original adjudicating authority while adjudicating the said SCN dropped the demand upto 08.07.04 but confirmed the demand for the period thereafter, upto 2007, though the proposal in the said SCN for confirmation of demand was upto 2006. The said order of original adjudicating authority was upheld by Commissioner(Appeals).

4. On going through the order of Commissioner(Appeals), we find that he has agreed with the appellant on the law point that the commission received for the job done prior to July, 2004, though received subsequently, is not liable to pay service tax. However, he rejected the appeal on the ground that the appellant has not been able to substantiate their plea of receiving the commission during the relevant period on account of activities carried out by them prior to the relevant period when the service was either not taxable or exempted.

5. In fact we find that the Commissioner(Appeals) called for a report from Dy. Commissioner, Service Tax to verify the details furnished by the appellant in the chart submitted before the authorities. A report was received from the Dy. Commissioner but the same was not conclusive, he again ~~rejected~~ returned the ~~above~~ Same to verify the bill-wise payment specifically in the circumstances when the appellant settle the payment with the clients after 2-3 years. As no reply was received from the office of Dy. Commissioner, appellate authority held that furnishing of chart by itself was not sufficient in the absence of details, the service tax is required to be upheld. He ordered accordingly.

6. At this stage, we find that failure on the part of the Dy. Commissioner to examine the bill-wise records, as directed by Commissioner(Appeals), cannot lead to confirmation of demand against the appellant. The appellant having placed on record chart along with bills/date of realization of payments, it was, further, for the Revenue to examine and verify the said statement produced on record by the appellant. The appellant cannot be held guilty on account of failure on the part of the officer to answer the queries raised by appellate authority.

7. In view of the above, we set aside the impugned order, remand the matter to adjudicating authority with directions to verify the appellant's claim of having rendered the service much prior to the period involved in the present appeal and received the payment during the material period.

8. Stay petition as also appeal gets disposed of in above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I