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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/855/2008-CU[DB], ST/860/08 WITH ST/CO/24/09

Dated: **05/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

C.C.E. LUCKNOW (Appellant)

VS

KAY DEE COLOR LABS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/497-98/2012-CU[DB]** dated **26/06/2012** 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
KAY DEE COLOR LABS
S-84, GOLE MARKET, MAHANAGAR,
LUCKNOW.92-CE/LKO/2008

2. Advocate(s) / Consultant(s):
Sh. H. Bajaj, Adv.
5- Jangpura Extn. Link Road.
New Delhi - 14
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

14. M/s Rastogi Colour Lab.
Santosh Bhawan, Golaganj
Jagat Narain Road.
Lucknow. (U.P.)

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

Service Tax Appeal No. 855 of 2008
Service Tax Appeal No. 860 of 2008 with ST/CO/24/09

Date of Hearing/ decision: 26.6.2012

[Arising out of Order-in-Appeal No. 92/CE/LKO/ 2008 dated 30.9.2008 and 95/CE/LKO/ 2008 dated 30.9.2008 both passed by the Commissioner of Central Excise(Appeals), Lucknow]

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
Lucknow — Appellants

Vs.

M/s. Kay Dee Colour Labs
M/s. Rastogi Colour Lab — Respondent

Appearance:
Shri B.L. Soni, DR for the Appellants
Shri Hemant Bajaj, Advocate for the Respondent

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

Final **ORAL ORDER NO.** ST/A/497-498/12-Cus

Per Archana Wadhwa (for the Bench):

Revenue is in appeal against the order of Commissioner (Appeals) vide which he has held in favour of the respondents. The issue involved is as to whether the value of the materials used for providing photographic services is required to be added in the value of services or not.

2. Both sides fairly agree that the issue involved stand decided against them by the Larger Bench of the Tribunal in the case of Agarwal Colour Photo Industries vs. Commissioner reported as [2011 (23) STR 608]. Further it is the contention of the respondent that the issue is decided against them by the said Larger Bench decision and Commissioner (Appeals) has decided the issue on merits, but demands in questions are barred by limitation.

3. In the case of M/s. Kay Dee Colour Lab, the period involved is from 1.7.03 to 25.3.04 whereas the show cause notice stand issued on 17.1.07 i.e. beyond the normal period of limitation. In the case of M/s. Rastogi Colour Lab, the period involved is from 16.7.01 to 31.3.05 whereas the show cause notice was issued on 18.10.06. Learned DR submits that the said case, the period involved is upto 31.3.06 and not 31.3.05, as contended by the respondents.

4. As regards limitation, we find that identical issue was the subject matter of various decisions of the Tribunal. One such reference can be

made to decision of the Tribunal in the case of CCE, Chandigarh vs. M/s. Satyam Digital Photo Lab [2011-TIOL-1519-CESTAT-DEL] as also in the case of Shobha Digital Lab vs CCE, Bhopal reported as [2011(24) STR 430 (Tri-Del)]. It stands held in the said decision that inasmuch as there was confusion during the relevant period, no malafide can be attributed to the assessee justifying longer period of limitation. As such, we find that the demand stands beyond the normal period of limitation, cannot be sustained.

5. In view of foregoing, though the Revenue's appeals on merit succeed but factually they failed as the demand is beyond the normal period of limitation. Inasmuch as there was some confusion about the period involved in the case of Rastogi Colour Lab, we make it clear that lower authorities would confirm the demand for the period which falls within the normal period of limitation, if any. However, we make it clear that no penalties would be imposable because it was bonafide case of interpretation of law. The assessee is also free to take up the issue of availability of Cenvat credit during the period for which the demand, if any, would be confirmed against them.

6. Revenue's appeals are disposed of in the above manner.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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