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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/491/2012-CU[DB], ST/S/1131/12

Dated: **20/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
ZEUS INFRAMANAGEMENT PVT LTD
FIRST FLOOR, NBCC TOWERS, 15,
BHIKAJI CAMA PLACE, NEW DELHI-110066.

Zeus Inframanagement Pvt Ltd (Appellant)

VS

C.S.T.-Delhi (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/538/2012-CU[DB]**, Stay/MISC Order No. and **ST/SO/808/2012** dated **03/07/2012** 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.S.T.-Delhi
17-B,I.A.E.A.House,M.G.Road,I.P.Estate,New Delhi,110002

2. Advocate(s) / Consultant(s):
VIJAI KUMAR,ADVOCATE
C-2/2329, VASANT KUNJ, N DELHI.110070

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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

ST/Stay/1131/2012 in Appeal No. ST/491/2012

[Arising out of Order-in-Appeal No. 03/S.Tax/DII/2012 dated 18.1.2012 passed by the Commissioner (Appeals), Central Excise, New Delhi]

Date of Hearing/decision: 3rd July, 2012

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 should 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 Departmental authorities?	

M/s. Zeus Inframanagement Pvt. Ltd. Appellant

Vs.

CST, New Delhi Respondent

Present for the Appellant : Shri Vijay Kumar, Advocate
Present for the Respondent : Shri K.P. Singh, D.R.

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

Stay **ORDER NO.** ST/S/ 808/12-Cus
Final order No. ST/A/ 538/12-Cus

Per D.N. Panda:

Shri Vijay Kumar, learned Counsel says that because there was revised return filed belatedly Revenue was of the view that adjudication shall not be made on the basis of revised return. If such return is considered, service tax paid and set off of Cenvat credit admissible can be judged.

2. Learned D.R. supports the order of the authorities below.

3. Heard both sides and perused the record.

4. We are not on the point to decide whether the authority shall act on the belated revised return or on the original return. In any circumstance law has to operate for proper application to determine tax liability on the facts settled. If the facts and circumstances establish that there was proper discharge of tax liability and Cenvat credit was available in accordance with law and also these aspects are evident from the record there shall not be difficulty to pass appropriate adjudication order. By this we do not say that a belated return shall receive consideration.

5. Since there are difficulties expressed in understanding the material facts and figures by both sides due to the situation of belated return, we dispense with requirement of pre-deposit and remand the matter to the learned adjudicating authority to grant fair opportunity to the appellant to support its claim. In the result, both stay application and appeal is remanded to original authority.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK

6. While agreeing with the above order, I wish to give specific direction to the adjudicating authority for de-novo proceedings.

7. In de-novo proceeding, the adjudicating authority should give clear finding as to, -

(i) the tax liability for each month during the impugned period based on value of taxable services as determined by the adjudicating authority based on evidence. An erroneous return filed shall not be sufficient evidence for having rendered service for value as reflected in such return.

(ii) the tax amount paid for each of the months as above along with dates of payment, and

(iii) interest and penalty if any for delayed payment. ~~if any~~

8. If any penalty is to be imposed for not filing correct return in time, the matter should be dealt with separately.

(Mathew John)
Member Technical