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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/462/2006-CU[DB]

Dated: **06/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
SCOTT WILSON KIRKPATRICK
INDIA PVT LTD
A-26/4, Mohan Co-operative Industrial
Estate, Mathura Road, New Delhi.

SCOTT WILSON KIRKPATRICK INDIA PVT LTD (Appellant)

VS

C.C.E. JAIPUR (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/539/2012-CU[DB]** , dated **04/06/2012** 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
NCRB, Statue Circle, C-SCheme, Jaipur.

2. Advocate(s) / Consultant(s):
A.K.BATRA & ASSOCIATES
A-36, First Floor, Rajouri Garden, Ring
Road, N Delhi.

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.III

ST/Appeal No.462/2006

(Arising out of order in appeal No. 3358/HKS/ST/JPR.II/06 dated 13.6.06 passed by the Commissioner of Customs & Central Excise(Appeals), Raipur)

Date of Hearing: 4.6.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, 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?	Yes
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 lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Scott Wilson Kirkpatrick India Pvt Ltd Appellant

Vs

CCE, Jaipur Respondent

Appeared for the Appellant: Shri Akash Deep, C.A.
Appeared for the Respondent: Shri B.L. Soni, SDR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/A/539/12-Cus.

Per Mathew John:

The appellant was providing services of Consulting Engineer to National Highways Authority of India during the period November 2001 to November 2003. They were registered with the service tax department and were paying service tax and filing returns.

2. On scrutiny of the documents of the appellants, Revenue found that the appellants were receiving certain consideration from NHAI under different headings as below:-

i) Remuneration for local staff;

ii) Remuneration for support staff;

iii) Transportation

iv) Duty travel to site

v) office rent

vi) office supplies, utilities and communication

vii) office furniture and equipment

viii) Reports and documents printing;

ix) Mobilization and demobilization

x) Accommodation for consultant's local staff

xi) Accommodation for expatriate staff and

xii) other costs Training.

3. The Revenue was of the view that the above consideration should have formed part of the gross value of services rendered by the appellants to NHAI and the appellants should have paid service tax accordingly. Based on such reasoning, a show cause notice was issued and adjudicated resulting in confirmation of demand of service tax of Rs. 7,85,197/- along with interest. Further penalties equal to the said amount were imposed under Sections 76 and 78 of the Finance Act, 1994. Aggrieved by the order, the appellants filed appeal with the Commissioner (Appeals) who did not give any relief. Aggrieved by the order of Commissioner (Appeals), the appellants have filed this appeal.

4. The Counsel for the appellants submits that the agreement between the appellants and NHAI was that NHAI would provide infrastructure and support at site to the appellant so that they can provide the job of Consulting Engineers. Further NHAI authorized the appellants to incur expenditure as was necessary to build such infrastructure and to get the expenses reimbursed from NHAI. He

points out that for setting up local office, they had incurred expenses on office equipments and such equipment were to the property of NHAI on completion of the contract. Therefore, he submits that these expenses were incurred by the appellants clearly on behalf of the NHAI and NHAI reimbursed such expenses. Such reimbursements cannot be considered as consideration for the service of Consulting Engineers provided by them to NHAI.

5. The Counsel relies on the following clarifications issued by CBEC to the effect that reimbursed expenses incurred by Consulting Engineers would not form part of assessable value of such services:-

i) B.43/5/97-TRU dated 2.7.97

ii) B 11/1/98-TRU 7.10.98

6. The Counsel for the appellant is also relying on the decision in their own case reported in 2007(5)STR-118 to the effect that such expenses would not form part of assessable value of services rendered by Consulting Engineers. He also relies on the following decisions:

(i) Black Stone Vs CCE
2006 (3) STR 711 TRU

(ii) Malabar Pvt Services Vs CCE
2008 (21) VST 33 CESTAT

7. He also submits that in this case, the show cause notice was issued on 31.1.2005 for demanding service tax short paid for the period November 2001 to November 03 by invoking the extended period of time. It is their contention that since there was clarification issued by CBEC in this matter and there were decisions of the Tribunal to the effect such expenses would not form part of assessable value, there cannot be any allegation that they suppressed information from the department and there is no justification for issuing of demand invoking extended period of time.

8. Opposing the prayer of the Counsel, the learned AR for Revenue submits that the expenses were very essential for providing the service without such expenses, they could not provide the service at all. What the appellant has done is bifurcation of value of services into

two parts, one for reimbursable expenses and the other for payment for consulting engineer service and paying service tax only on the latter. He submits that under Section 67 of the Finance Act, 1994 the gross value received from the person to whom service is provided to be considered as the value of service rendered. He relies on the following citations:

a) Net Macdonald Lgtd Vs CCE
2001 (134) ELT 799 (Tri-Del)

b) Shri Bhagavathy Traders Vs CCE Cochin
2011-TIOL-1155-CESTAT-BANG-LB

He points out that in spite of clear decision of the Tribunal in the year 2001 itself, the appellant chose not to pay tax on the full value. Therefore, ground of suppression alleged by the department is maintainable.

9. We have considered arguments of both sides. What we find is that taxability of reimbursable expenses on travel local accommodation, etc. incurred by a Consulting Engineer has been under dispute, from the early stage from which said service was made taxable. The impression of the appellants was backed by instructions from CBEC. The decision of the larger Bench of the Tribunal deciding the matter in Shri Bhagavathy Traders (Supra) is under challenge before the Apex Court

10. For the purpose of deciding this appeal, it is sufficient to examine whether extended period of five years could have been invoked for issuing such demands. In view of the clarification issued by CBEC and the decisions relied by the appellants, we consider the action of the appellant was bonafide and suppression cannot be alleged for invoking extended period of time for demanding such service tax. We allow the appeal on this ground.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)