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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

STAY Application No. : ST/Stay/1764/2012
Appeal No. : ST/727/2012-CU[DB]

Dated: **16/08/2012**

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

Krishi Upaj Mandi Samiti
Kherli,alwar

Krishi Upaj Mandi Samiti (Appellant)

VS

C.C.E. & S.T.-Jaipur-i (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/542/2012-CU[DB]**, Stay/MISC Order No. **ST/SO/847/2012** and dated **13/08/2012** 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. & S.T.-Jaipur-i
NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR,302005

2. Advocate(s) / Consultant(s):
SANJAY JHANWAR/KESHAV MALOO,
CHIR AMRIT LAW CHAMBERS, 6TH FLOOR, MILE UNIQUE DESTINATION, OPP TIMES OF INDIA,TONK ROAD, JAIPUR.
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. 2, R.K. Puram, NEW DELHI

COURT NO. II

ST/Stay/1764/2012 in & appeal No. 727/2012-CU

[Arising out of Order-in-Appeal No. 24(AKJ)/ST/JPR-I/2012 dated 23.2.2012 passed by the Commissioner (Appeals) Central Excise & Customs, Jaipur-I]

Date of hearing/decision: 13th August, 2012

M/s. Krishi Upaj Mandi Samiti
Appellant
Reptd. By Shri Rahul Lakhwani, C.A.

Versus

CST, Jaipur-I
Respondent
Reptd. By Shri N. Pathak, D.R.

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

FINAL ORDER NO.ST/A/542/12-Cu **DATED**

Per D.N. Panda: Stay order No.ST/S/847/12-Cus.

Learned Chartered Accountant says that allotment fees received by the appellant has been brought to tax under Finance Act, 1994 holding the same to be rental receipt from immovable property.

2. Once this is the pleading, we examined the show cause notice as well as adjudication order. These documents do not throw light as to the materials which enabled the authority to come to conclusion of taxability when Para 6 of the order does not exhibit a detailed examination on the nature of receipts. The appellant had defence reply which has been

recorded in Para 10 of the order. Today sample copy of the receipt has been shown to us to impress that the receipts were of 'Fees' in nature. We are unable to draw any opinion at this stage without the evidence being tested by the officers at grass root level. Therefore, considering that interim order shall serve no purpose, we remand back the matter to learned Adjudicating Authority to examine the issue afresh on the basis of evidence available on record and the material which guided the authority to issue the show cause notice to arrive at the appropriate conclusion as to the nature of the receipts and then consider taxability thereof. Without such process being followed it is very difficult to approve adjudication order.

3. Therefore, dispensing with requirement of pre-deposit appeal is remanded to learned Adjudicating Authority to re-do the adjudication examining nature of transaction, event of levy, taxability of taxable service if any provided and applicability of other provisions of Finance Act, 1994. Adjudication is to be completed in accordance with law granting fair opportunity of hearing to the appellant. We may add that in the interest of Revenue adjudication may be completed expeditiously.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK