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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/291/2012
Appeal No. : ST/141/2012-CU[DB]

Dated: **05/09/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
DATAGEN POWER SYTEMS PVT. LTD.
403, 4TH FLOOR, PARK CENTRA,
SECTOR-30, NEAR NH-8, GURGAON,
HARYANA.

DATAGEN POWER SYTEMS PVT. LTD. (Appellant)

VS

C.S.T. DELHI (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/561/2012-CU[DB]**, Stay/MISC Order No. **ST/SO/911/2012** and dated **23/08/2012** passed by the Tribunal under section 81(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.P. Estate, IAEA House, New Delhi.

2. Advocate(s) / Consultant(s):
V. Laxmikumaran
5,Jangpura Extension,Link Road,New Delhi-110014

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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad-500038

13. Office Copy

14. Gaurd File

(Assistant Registrar)
Custom Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay No.291/2012
ST/Appeal No.141/2012

(Arising out of order in appeal No. 106/S.Tax/D.II/2011 dated 9.3.2011 passed by the Commissioner of Customs & Central Excise (Appeals), New Delhi)

Date of Hearing: 23.8.2012

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 Datagen Power Systems Pvt Ltd Appellant

Vs

CST, Delhi Respondent

Appeared for the Appellant: Shri Manish Gaur, Advocate
Appeared for the Respondent: Shri V.P. Batra, DR

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

Stay ORDER No. ST/S/911/12-Cus.
Final order No. ST/A/561/12-Cus

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of service tax of Rs.1,89,307/- and penalty of identical amount imposed under

Section 76 of the Finance Act, 1994, we proceed to decide the appeal itself as we find that the disputed issue requires verification of the factual aspects, which can only be done at the level of original adjudicating authority.

2. The appellants are service provider falling under the category of Consulting Engineer. They were paying service tax at the time of raising the invoices. As per the learned Advocate, sometimes the billed amounts were received after a gap of few months. By treating such amounts received after payment of tax, the lower authority has held that there was short payment of tax and appellant is required to pay tax on the same. It is his contention that if amounts received and tax paid is reconciled, there is no shortfall on payment of tax. Further, he fairly agreed that such reconciliation statements were not placed before the adjudicating authority but he points out that such statements were placed before the Commissioner (Appeals) who has noted the same. But by observing that the appellant has not placed TR-6 challans, the order of adjudicating authority was confirmed

3. As no legal issue is involved in this case and the dispute revolves around the facts, we set aside the impugned order and remand the matter to the adjudicating authority for reconsideration and verification of the reconciliation statement and concerned TR-6 challans.

4 At this stage, we take note of the objection by the learned DR that the appellant has not been appearing before the Commissioner (Appeals) on three dates of hearing granted to them. As such, he submits that the appellant should be directed to appear before the

original adjudicating authority on the first date of hearing itself. The learned Advocate undertakes to do so.

4. The stay petition and appeal are disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)