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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/799/2012-CU[DB]

Dated: **18/10/2012**

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

Walker Chandilk & Co
L-41,connaught Circus,n Delhi-01

Walker Chandilk & Co (Appellant)

VS

C.S.T.-Service Tax - Delhi (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/639/2012-CU[DB]** dated **16/10/2012** 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.-Service Tax - Delhi
MG MARG... IP ESTATE,
17-B... IAEA HOUSE...I P ESTATE,

DELHI
110002

2. Advocate(s) / Consultant(s):

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
CUSTOMS Appeal Branch

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

ST/Appeal No. 799/2012

(Arising out of order in original appeal No.64/ST/DLH/2012, dated 28.3.2012 passed by the Commissioner of Customs & Central Excise(Appeal), New Delhi)

Date of Hearing: 18.9.2012
Date of Pronounce. : 16-10-12

Hon'ble Mr. D.N. Panda, Judicial Member
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?
2. Whether it would 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 Department Authorities?

M/s Walker Chandiok & Co. Appellant

Vs

CCE, New Delhi Respondent

Appearance:
Appeared for the Appellant: Shri M.K. Mishra, Rep.
Appeared for the Respondent: Shri G.K. Dixit, SDR

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

Final Order No.ST/A/639/12-Cus......dated...........

Per Mathew John:

The Appellant is a firm of Chartered Accountants. They were issued with a demand Notice dated 22-03-05 alleging that they had short paid service tax of Rs. 3,59,194 on total value of services of Rs. 1,15,52,102 received by them during the period Oct 03 to Mar 04. The Notice did not state how the said figure was worked out and what were the documents based on which Revenue was issuing the demand Notice. The appellant filed reply dated 06-07-2005. They stated that out of amount of Rs. 1,15,52,102/- received by them during the said period Rs. 2,33,976 was for services rendered prior to 14-05-03, when rate of tax was 5% only. Further Out of the said amount, Rs. 1,20,193 was towards reimbursable expenses of out of pocket expenses which would not form part of the value of taxes received. The adjudicating authority held that the claims were not substantiated and hence confirmed the demand stated in the Notice.

2. Aggrieved by the order, the appellant filed appeal with Commissioner (Appeal). The Commissioner (Appeal) gave relief in respect of value of services rendered prior to 14-05-03, calculating tax there on at 5%, resulting in reduction of demand to the extent of Rs. 7016/-. He also gave relief in respect of tax demanded on amounts received as reimbursed expenses resulting in further reduction of demand to the extent of Rs. 9615/- he upheld the rest of the demand.

3. Aggrieved by the order of the Commissioner (Appeal) the appellant has filed this appeal before the Tribunal. The Ld. A. R. submits that he does not understand how the short levy has been

worked out because no worksheet has been supplied to them so far.

4. The appellant submit that the difference in duty liability as worked out by Revenue arises on account of the fact that Revenue has not taken into account the fact that the amounts realized by them were actually cum-tax amounts. They submit the additional tax liability is only to the extent of Rs. 1080 and they have already paid Rs. 1243 on 04-06-2005. They give detailed working as under:

S.No.	Particulars	Amount
1.	Total amount realized during the period inclusive of service tax	Rs.1,15,52,102
2.	Less: Reimbursement of out of pocket expenses	Rs. 1,20,193
3.	Less: Amount realized inclusive of service tax) @ 5% - (A)	Rs. 2,33,867
4.	Net amount realized inclusive of service tax @ 8% - (B)	Rs.1,11,98,042
5.	Service tax due on (A) above (2,33,867*5/105)	Rs. 11,137
6.	Service Tax due on (B) above (1,11,98,042*8/108)	Rs. 8,29,485
7.	Net service tax due	Rs. 8,40,622
8.	Less: Service Tax paid as per ST – 3 return	Rs. 8,39,542
9.	Balance to be paid	Rs. 1,080
10.	Deposited along with interest of Rs. 163 On 04.06.2005	Rs. 1,243
11.	Balance due	NIL

5. The appellants have also given detailed tabulation of invoice-wise receipts during the period.

6. The Ld. A. R for Revenue submits that the demand is worked out on the basis of value of taxable services received by them as reported in their ST-3 returns. Since the total value was accepted in the return, revenue did not rely on any specific documents. He also submits that the appellants had not raised the issue of cum-tax benefit in proceeding below.

7. We note that the Show cause notice did not indicate the method of working out the tax amount short paid. This fact has resulted in protracted proceedings at three levels to sort out dispute of such a small a mount and simple issues.

8. If the amount of Rs.1,15,52,102 received is inclusive of tax liability that is no amount has been separately charged prima facie it appears that no demand survives in this regard.

9. So we set aside the order and remit the matter to the adjudicating authority to verify the calculation as above and pass appropriate orders. It is made clear that issues already settled in proceedings so far cannot be re-opened by Revenue in de-novo proceedings and the matter is remitted only for verification of figures and calculation.

10. The appeal is allowed by way of remand.

(Pronounced in Court on 16-10-12)

D. N. Panda
(Judicial Member)

Mathew John
(Technical Member)

Neha*