

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/3553/2011

Appeal No. : ST/1702/2011-CU[DB]

Dated: 19/10/2012

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

MCNALLY BHARAT
ENGINEERING COMPANY LTD
4 Mangoe Lane, 4th, 5th & 7th floor,
Kolkata.

MCNALLY BHARAT ENGINEERING
COMPANY LTD

(Appellant)

VS

C.C.E Allahabad

(Respondent)

I am directed to transmit herewith a certified copy of Final Order No. ST/A/641/2012-CU[DB] ,
Stay/MISC Order No. ST/SO/1135/2012 and dated 15/10/2012 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.C.E Allahabad
38, M.G. Marg, civil Lines, Allahabad

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

V. Lakshmi Kumaran
5, Jangpura Extension,
Link Road,
New Delhi,
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

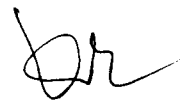
10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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
CUSTOMS Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Service Tax Stay Appn. No.ST/S/3553/2011 in
Service Tax Appeal No.ST/1702/2011-CU [DB]
[Arising out of Order-in-Appeal No.103.ST/Alld/2011 dated
24.08.2011 passed by the Commissioner (Appeals), Customs,
Central Excise & Service Tax, Allahabad]

M/s.MCNALLY Bharat Engineering Co. Ltd. ...Appellant

Vs.

CCE, Allahabad ... Respondent

Present for the Appellant : Shri.B.L. Narasimhan, Advocate
Present for the Respondent : Shri.Amresh Jain, DR

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER

Stay order No ST/S/1135/12- Cus. Date of Hearing: 15.10.2012
Final ORDER NO. ST/A/641/12-Cus. DATED: _____

PER: D.N.PANDA

Ld. Counsel for the appellant submits that when the appellate authority found that issuance of show cause notice dated 14.10.2009 by the Id. Jt. Commissioner was beyond his jurisdiction, the proceeding itself was without jurisdiction. Therefore, remand of the matter to the lower authority by the Id. First Appellate Authority was uncalled for. Drawing attention to page 117 he says that while issuing show cause

notice the authority was aware that appellant was subjected to centralized registration. He placed reliance on the case of Commissioner of C. Ex., Cus. & Service Tax., BBSER-II vs. Ores India (P) Ltd. reported in 2008 (12) S.T.R. 513 (Tri.-Kolkata)

2. Ld. DR on the other hand says Calcutta jurisdictional authority is looking into the matter.

3. Heard both sides and perused records.

4. When the appellate authority came to the right conclusion that Id. Jt. Commissioner had no jurisdiction to issue show cause notice, he should have declared the proceeding to be *abinitio void*. That being not done, disposing stay application, the appeal is allowed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

Anita