

Jain Colour Lab Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-2008

Judge : S Jha, V T M.

Appellant : Jain Colour Lab

Respondent : Cce

Judgement :

2. The appellant is engaged in the business of developing and printing colour photographs. The case of the appellant is that in order to provide the service it purchases paper and chemicals which is included in the gross amount charged for the service and as that part of the service amounts to sale, service tax is not payable on it. It is said that for the remaining part of the service the appellant is already paying service tax on the basis of taxable value arrived at after deducting the cost of chemicals and papers used in developing and printing colour photographs. It is said that in similar cases, (Jain Brother v. CCE, Bhopal (ST/7510/06) this Tribunal has granted full waiver in view of the order of the Madhya Pradesh High Court in the case of Agrawal Colour Photo Industries v. Asstt. Commr. of Customs and Central Excise, Jabalpur (M.P.) 2007 (8) STR 3 (M.P.). Reliance was placed on the said order of the Madhya Pradesh High Court which was passed relying on a decision of the Supreme Court in Bharat Sanchar Nigam Ltd. and Anr. v. Union of India 2006 (2) STR 161 (SC). Reference was also made to a communication from the CBEC dated 7.4.2004. On behalf of the Revenue, attempt was made to distinguish the case. In view of the orders passed

by the Tribunal in the cases of M/s. Jain Brothers and others we are not inclined to take a different view.

Accordingly, we grant complete waiver of the requirement of pre-deposit. The stay application is allowed accordingly.

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