

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066  
LARGER MATTER NOTICE

Appeal No. : ST/143/2012-CU[DB] ST/05/2010-CU[DB]

Name of the Appellant

1.

**National Accreditation  
Board For Testing And  
Calibration Laboratories,**  
Plot No.45,sector-44  
GURGAON-HARYANA

Name of the Respondent

2.

**C.C.-Delhi - I**  
GATE NO.2,  
C R BUILDING...I P  
ESTATE-DELHI-110109


The issue involved in the matter is discussed in the Interim Order No. 82-83 dated:15.12.2016 [Copy Enclosed]

The matter is now listed for hearing before LARGER BENCH.

You are hereby directed to make available 01 sets of appeals/complete paper book and forwarded them to the Tribunal well before the date of hearing.

Take notice that the Larger Bench case mentioned above has been fixed for hearing on 27/02/2017 at 10.30 AM before CESTAT, West Block No.2, R.K. Puram, New Delhi. In case matter not reached or otherwise, the same will be taken on subsequent date or as may be convenient to the Tribunal.

Dated: 06/02/2017

  
Deputy/Asstt. Registrar  
(CUSTOMS Appeal Branch)

**Copy To:**

1. Deputy Registrar/Assistant Registrar, CESTAT, New Delhi, Mumbai, Chennai, Kolkata, Ahmadabad, Bangalore, Allahabad, Hyderabad & Chandigarh for display on notice board
2. Secretary, Bar Association, CESTAT, New Delhi, Mumbai, Chennai, Kolkata, Ahmadabad, Bangalore, Allahabad, Hyderabad & Chandigarh
3. S.D.R.
4. Advocate(s) / Consultant(s):

**P. K. Sahu**  
D-247, IInd Floor, Defence  
colony,  
New Delhi

5. Office Copy

6. Computer Section: To Display on CESTAT Website

**Note:** If any party wants to submit written submission. Please submit it well before the Date Of Hearing.

FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066  
CUSTOMS APPEAL BRANCH

Dated: 23/12/2016

To

Appellant as per address in table below  
Respondent as per address in table below

Interim Order No. IO/ST/82-83/2016-CU[DB] dated : 15/12/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

  
Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1-2	ST/143 /2012 ST/5/2010	National Accreditation Board For Testing And Calibration Laboratories, Plot No.45,sector-44 GURGAON HARYANA-

	Name and Address of Respondent
3	C.S.T.-Delhi - I GATE NO.2,C R BUILDING...I P ESTATE, DELHI-110109

4 Other Appellants and Respondents as per Annexure

Copy To

Advocate(s) / Consultant(s):

**P. K. Sahu**  
**D-247, IInd Floor, Defence**  
**colony,**  
**New Delhi, Delhi**

- 6 Bar Association, CESTAT, Delhi
- 7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
- 8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
- 9 Director Publications, Customs, Excise. I.P. Estate, Delhi
- 10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
- 11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
- 12 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
- 13 TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070
- 14 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
- 15 The ICAFI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
- 16 C.D.R. 17 Office Copy 20 Guard File
- 21 Second Folder



  
Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision: 15.12.2016

Service Tax Appeals Nos. 05/2010 and 143/2012

National Accreditation Board for Testing and Calibration Lab. Appellants

Vs.

CST, Delhi-I

Respondent

**Appearance:**

Rep. by Shri P.K. Sahu, Advocate for the appellant.  
Rep. by Shri Ranjan Khanna, DR for the respondent.

**Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)**  
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Interim Orders... 82-83 / 2016



**Per B. Ravichandran:**

In these two appeals, where on the same dispute of appellant's liability to pay service tax under the category of 'Technical Inspection and Certification Service' in terms of Rule 65(108) of Finance Act, 1994, the Original Authority confirmed the demand of service tax on the ground that the appellants are certifying the process undertaken by the appellant's client's labs and as such are covered by the tax entry.

2. Ld. Counsel appearing for the appellant, before proceeding with the arguments on merit, brought to our notice that there are two decisions of the Tribunal viz. **Quality Council of India – 2016 (43) STR 559 (Tribunal-Delhi)** and **American Quality Assessors (I) Pvt. Ltd. – 2009 (16) STR 413 (Tribunal-Bang.)** on the subject issue. It is submitted that in the case of **Quality Council of India (supra)**, the Tribunal disagreed with the earlier decision of **American Quality Assessors (supra)**. It is his submission that a Coordinate Bench, if in

*Ravichandran*

disagreement with the earlier decision, has to necessarily make reference for placing the matter before the Larger Bench. He prayed that for proper resolution of the dispute, the Tribunal may consider a reference to the Larger Bench.

3. Ld. AR submitted that the decision in **Quality Council of India (supra)** is more specific and elaborate and latest on the subject. Though a difference is recorded in para-5, he submitted that emphasis to arrive at the conclusion was on inspection and "physical process" undertaken by the appellant as a certifying body.

4. We have heard both the sides and perused the appeal records and the case laws cited above.

5. Admittedly, the material facts relevant in the present appeal as also the subject matter of the two decided cases, are almost similar. Hence, distinguishing the cases on the basis of the facts may <sup>not</sup> ~~de~~ resolve the dispute in the present appeal.

We note that in **American Quality Assessors (I) Pvt. Ltd. (supra)**, the Tribunal held that applying the principles of *ejusdem generis* and "process" mentioned in the definition could relate only to physical and chemical process. The appellant in the said case carried out audit of quality of various schools and organizations. The Tribunal held that they are not covered by the tax entry. In **Quality Council of India (supra)**, it has been specifically recorded that the principle adopted by the Tribunal in **American Quality Assessors (I) Pvt. Ltd. (supra)** is not correct.

It was held that the principle of *ejusdem generis* will not apply to the present tax entry as "goods" and "immovable property" can not form a group at all. Though we find in para-5, the Tribunal recorded that there is physical process of inspection and accordingly, the appellants are covered by the tax entry, we find that there is a basic difference in applying the principle in these two decisions.

Further, discussion and distinction based on the interpretation of the tax entry, by another Coordinate Bench may not resolve the issue finally. We are of the opinion that the matter requires to be placed for final resolution of the scope of the tax entry "technical inspection and certification" for service tax purpose, during the relevant period before the Larger Bench of this Tribunal. Accordingly, we direct the Registry to place the appeal papers with this order and earlier orders of the Tribunal, referred to above before the Hon'ble President, CESTAT for consideration of constituting a Larger Bench.

[order dictated and pronounced in the open court]

*Sd-*  
(S.K. Mohanty)  
Member (Judicial)

Ckp.

*Sd.*  
(B. RAVICHANDRAN)  
MEMBER (TECHNICAL)

प्रमाणित प्रति/Certified True Copy

*[Signature]*  
सहायक न्यायाधीश (Asst. Registrar)  
सामंजस्य एवं सेवा कर  
अपील विभाग / (C.E.S.T.A.T.)  
Work Book No-11/ पत्तिका क्रमांक-11  
एन. डी. फोरम नई दिल्ली-110066  
R. I. Forum, New Delhi-110066