

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.G. Marg,
Office Of Commissioner Of Central Excise, Customs, Service Tax, Allahabad-211001

Dated: 06/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70007 /2015- dated 15/09/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Application	Appeal	Name and Address of Appellant
	ST/1000/2010	COMMISSIONER OF CENTRAL EXCISE, LUCKNOW 7-A, ASHOK MARG, LUCKNOW

Name and Address of Respondent
HIND AGRO INDUSTRIES LTD CDF COMPLEX, ANOOP SAHAR ROAD, ALIGARH, UP

Asst. Registrar

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

- 4 Bar Association, CESTAT, Delhi
- 5 Director Publications, Customs, Excise, I.P. Estate, Delhi
- 6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pirmah Marg, New Delhi 3
- 7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram Street, T. Nagar, Chennai-17
- 8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110004
- 9 Easy Service Tax Online Pvt. Ltd., 407A, Icon Mall, Satellite Road, Ahmedabad-15
- 10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
- 11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
- 12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
- 13 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad, -500052
- 14 C.D.R. 15 Office Copy 16 Court File

Asst. Registrar
Regional Bench, Allahabad

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALAHABAD**

Appeal No. ST/1000/2010

(Arising out of Order-in-Original No. 15/Commr/LKO/ST/2010 dated 13.04.2010 passed by the Commissioner of Central Excise & Service Tax, Lucknow).

For approval and signature:

Hon'ble Shri P.S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

- =====
1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether their Lordships wish to see the fair copy of the order? : Seen
 4. Whether order is to be circulated to the Departmental authorities? : Yes
- =====

Commissioner of Central Excise, Lucknow

Vs.

M/s Hind Agro Industries Ltd.

Respondent

Appearance:

Shri Govind K. Dixit, Addl. Commr. (AR) for Appellant

Shri Victor Das, Advocate

for Respondent

CORAM:

**SHRI P.S. PRUTHI, MEMBER (TECHNICAL)
SHRI S.S. GARG, MEMBER (JUDICIAL)**

Date of Hearing: 15.09.2015

Date of Decision: 15.09.2015

Concluded

Final ORDER NO. 70007/2015

Per: P.S. Pruthi



The respondent had availed services of foreign agency for procuring the orders and arranging sales and paid large amount of commission in the years 2002-03, 2003-04 and 2004-05 in foreign currency. The case of the Revenue is that the Service Tax was chargeable on the amount received on account of providing such services in terms of sub-clause (iv) of Rule 2(1)(d) of Service Tax Rules, 1994. In adjudication proceedings, the demand of duty was dropped by the Commissioner on the ground that the tax is payable only after 18.4.2006 when the Section 66A was introduced under the Finance Act, 1994. The Commissioner referred to several judgments of the Tribunal as well as the Hon'ble Bombay High Court in the case of *Indian National Ship Owner's Association Vs. Union of India - 2009 (13) STR 235 (Bom)*.

2. Revenue has filed this appeal on the ground that the Rule i.e. Taxation of Service (provided from outside India and received in India) Rules, 2006 lay down under Rule 3(iii)(c), that service of a commission agent which is classifiable under Section 65(105)(zzb) under Business Auxiliary Services provided from outside India and received in India shall in relation to taxable service when such service is received by the

service receiver located in India. Therefore, Service Tax is payable.

3. We find that this is a settled matter which was examined in detail by the Honble Bombay High Court in the case of Indian National Ship Owner's Association (supra), which held that the levy of Service Tax on a person, who is residing in India and received services from outside India, is not sustainable prior to the insertion of Section 66A in the Finance Act, 1994. Subsequently in various judicial pronouncements, the same view has been upheld.

4. In this view of the matter, the impugned order is upheld and Revenue's appeal is dismissed.

(Dictated and pronounced in Court)

(S.S. Garg)
Member (Judicial)

(P.B. Pruthi)
Member (Technical)

Noted for / Certified True Copy
15.10.15
Registrar, Assistant Registrar
Office of the Registrar (C.E.S.T.A.T.)
Office of the Registrar (C.E.S.T.A.T.)
38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 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