REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 14/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70991/2017-SM[BR] dated 08/09/2017

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

Application	Appeal	Name and Address of Appellant
1	ST/219/2010	**KUNDAN CASTINGS PVT. LTD.** 122/235, Plot No.17, Near Lajpat Nagar Telephone Exchange, Fazalganj, Kanpur.
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 08/09/2017.
DATE OF DECISION : 08/09/2017.

Service Tax Appeal No. 219 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 3/Commissioner/Service Tax/2009 dated 11/11/2009 passed by The Commissioner, Central Excise & Service Tax, Kanpur.]

M/s Kundan Castings Pvt. Ltd. — Appellant

Versus

CCE, Kanpur — Respondent

Appearance

Shri Atul Gupta, Advocate – for the Appellant.

Shri Mohd. Atlaf, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No.70991/2017 Dated : 08/09/2017

Per. Ashok Jindal :-

The issue involved in this case is demand of service tax on commission received for distribution of mutual fund units of various mutual fund companies during the period w.e.f. 09/07/2004 to 31/03/2005.

2. The appellants had entered into an agreement with M/s V.S. Infrastructural Capital Ltd. (main contractor) as per which

the main contractor were to enter into an agreement with mutual fund companies to explore investment in mutual funds, corporate finance, portfolio management services, IPO shares and bonds or any other financial products by prospective investors, for the said companies. Then on, the applicant, alongwith the main contractor were to operationalize the said agreement. The mutual fund companies paid the commission for the said activities to main contractor on which the service tax liability was duly discharged. The main contractor then passed some of his share of commission received to the applicants. Department issued show cause notice for demand of service tax on the commission received by the applicants from main contractor.

3. The learned Advocate for the applicant submits that as the main contractor has duly discharged service tax liability on the said commission, service tax is not liable to be paid by the applicants as Finance Act does not provide for double taxation of the services. He relied on the decision of **M/s Vijay Sharma & Company vs. CCE, Chandigarh** reported in **2010 (20) S.T.R. 309 (Tri. – LB)**.

4. He further submitted that as it is an issue of interpretation. As matter has placed to Larger Bench of the Tribunal, therefore, the extended period of limitation is not invokable in the light of the decision of Hon'ble Supreme Court in **Continental Foundation Jt. Venture vs. CCE, Chandigarh – I** reported in **2007 (216) E.L.T. 177 (S.C.)**.

5. Heard the parties considered the submissions.

6. I find that the issue went before the Larger Bench of the Tribunal in the case of **Vijay Sharma & Company** (supra) wherein it has been held :-

> "8. The dispute in all the three references is on a narrow compass. There is no dispute by either side that a sub-broker is falling under the definition of stock broker under Section 65(101) of the Finance Act, 1994 w.e.f. 10-9-2004. The definition reads as under :-
>
> > "(101) 'Stock-broker' means a person, who has either made an application for registration or is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under SEBI Act 1992".
>
> There is also no dispute by either side that when an application is made by a person for registration as a sub-broker or a person registered as such under SEBI Act 1992 read with the regulations made thereunder, shall be called as stock-broker. So also there is no dispute that in terms of Section 65(105)(a) of Finance Act, 1994 services provided to any person by a sub-broker or stock broker in connection with the sale or purchase of securities listed on a recognized stock exchange shall be taxable service from the aforesaid date. So also, a sub-broker who is registered or has made an application for registration as such under SEBI Act, 1992, is permitted to provide similar service as provided by a stock broker. The service so provided becomes taxable service under Finance Act, 1994 w.e.f. 10-9-2004. A sub-broker is thus liable to pay service for the nature of taxable service provided as defined by Finance Act, 1994 aforesaid.

9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period.

10. In all the three references before us, it would be proper to send the matter back to the original authority, without being sent to the concerned Benches, to verify as to whether the stock-brokers have paid service tax on behalf of the sub-brokers and if so, reduce the demand on sub-brokers to that extent and pass fresh orders, granting fair opportunity of hearing to the sub-brokers. All the appeals are allowed by way of remand".

Ashoyw

7. Further, I find that as issue involved in the matter has placed before the Larger Bench of this Tribunal, therefore, extended period of limitation is not invokable. In this case for the period 9th April 2004 to 31st March, 2005, the show cause notice has been issued on 24/01/2009, therefore, I hold that the demand is time barred on limitation.

8. In these terms appeal is allowed on merits as well as on limitation with the consequential relief, if any.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

PK

प्रमाणित प्रति/Certified True Copy
27/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
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