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

REGISTERED / AD

To

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

Dated: **01/04/2014**

Final Order No. **ST/A/51290/2014-CU[DB]** dated **13/03/2014**

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	ST/Stay/3670/2012	ST/2927/2012	**Alpine Modular Interiors Pvt Ltd** P-8/b, Hauz Khas Enclave, N Delhi-16

	Appeal	Name and Address of Respondent
1	ST/2927/2012	**Commissioner of Service Tax-Service Tax - Delhi** MG MARG... IP ESTATE, 17-B... IAEA HOUSE...I P ESTATE, DELHI-110002

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

Sujit Ghosh,Adv
BMR, LEGAL ADVOCATE,
705-706,
INTERNATIONAL TRADE TOWER, 7TH FLOOR NEHRU PLACE,
NEW DELHI

4 Bar Association, CESTAT, Delhi
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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon 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 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 13/03/2014.

Service Tax Stay Application No. 3670 of 2012 in Appeal No. 2927 of 2012

[Arising out of the Order-in-Original No. 98-100/GB/2012 dated 25/05/2012 passed by The Commissioner of Service Tax, New Delhi.]

For Approval and signature :
Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Alpine Modular Interiors (P) Ltd. — Appellant

Versus

CST (Adjudication), New Delhi — Respondent

Appearance

Shri Sujit Ghosh, Advocate – for the appellant.

Shri Govind Dixit, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice G. Raghuram, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 51290 /2014 Dated : 13/03/2014

Per. Justice G. Raghuram :-

Heard Shri Sujit Ghosh, Advocate, the learned counsel for the appellant and Shri Govind Dixit, learned Departmental Representative for the respondent/Revenue.

2. The order dated 25/05/12 passed by the learned Commissioner, Service Tax, Delhi confirmed the service tax demand of Rs. 72,43,736/- apart from interest and penalties, for having provided Business Auxiliary Service to an overseas corporate entity - UB Office Systems Ltd., a resident entity of Hong Kong (hereinafter UBOS), during April 2005 to September 2009 and October 2009 to September 2010. Proceedings were initiated under two show cause notices dated 22/10/10 and 13/04/11 for the respective periods in issue.

3. The appellant (hereinafter referred to as AMIL) provided certain services to UBOS under an agreement dated 02/01/02. The scope of the services provided by AMIL are evaluation of market trends and identification of prospective customers in India for the overseas entity, for its modular furniture business; and providing a list of prospective customers on a regular basis to enable UBOS to strategise its decisions, for sale of its products to customers. The agreement also records a clear stipulation that the ultimate customer shall deal directly with UBOS and remit payments against supplies received, to UBOS, with a specific stipulation that AMIL is not authorized to collect any payments from customers on behalf of the foreign entity. The agreement clearly stipulates that goods would be supplied by UBOS directly to the customers. Clause 2 of the agreement stipulates that UBOS shall pay commission in U.S. dollars at the stipulated rates (in percentage terms) to AMIL for every successful sale made by UBOS in India. The

agreement between the parties also stipulates that AMIL should bear the minor and incidental expenditure incurred for assembly of the finished components at customer's premises, for or on behalf of UBOS; that reimbursement of these expenses is not estimated to be more than 1% of the FOB value of the products and is included in the commission payable by UBOS to the appellant - AMIL.

4. Revenue initiated proceedings on an allegation that AMIL provided Business Auxiliary Service to the overseas entity and was liable to remit service tax. The appellant does not contest the classification of the service provided as being BAS. Before the Adjudicating Authority AMIL contended that Business Auxiliary Service provided to UBOS amounts to export of service within the ambit of Export of Service Rules, 2005, since from the nature of the services provided, these were utilized by the recipient outside India; that it received consideration in convertible foreign exchange; and is therefore, excluded from exigibility of the tax, under provisions of the 2005 Rules.

5. The above defence was negated by the Adjudicating Authority resulting in confirmation of the demand of tax, interest and penalty, as adverted to supra.

6. Larger Bench of this Tribunal in **Paul Merchants Ltd. vs. CCE, Chandigarh** reported in **2013 (29) S.T.R. 257 (Tri. - Del.)** considered substantially analogous facts and the relevant statutory provisions and concluded that the transactions fall within the ambit of Export of Service Rules, 2005 and are not therefore liable to levy of service tax. This view is reiterated in the recent decision of this Tribunal dated 28/02/14 in an appeal preferred by M/s GAP

International Sourcing (India) Pvt. Ltd. vs. CST, Delhi, Service Tax appeal No. 819 of 2008.

7. The learned Departmental Representative would however contend that the judgment in **Paul Merchants Ltd. vs. CCE, Chandigarh** (supra) and in **GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi** (supra) have not correctly comprehended the scope and trajectory of provisions of the Export of Service Rules, 2005 nor Board Circular No. 141/10/2011-TRU dated 13/05/2011.

8. The invitation by Revenue to ignore the law declared by the Larger Bench in **Paul Merchants Ltd. vs. CCE, Chandigarh** (supra) and reiterated in **GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi** (supra) is unacceptable. It is axiomatic that decisions of this Tribunal are binding on Revenue. Jurisprudential stability and coherence in law is the foundation for a stable investment climate which is critical to economic stability of the Republic. Once the Tribunal pronounces a verdict after consideration of the relevant legal environment, the executive branch and an adjudicator at a lower level in the hierarchy is bound by such verdict, subject only to remedies within the judicial branch or appropriate and constitutionally permitted legislative curatives. We are informed that Revenue has preferred an appeal against **Paul Merchants Ltd. vs. CCE, Chandigarh** (supra) and the same is under the consideration before the Punjab & Haryana High Court. In the circumstances, Revenue cannot be heard to contend that there are errors in the declaration of law by the Larger Bench. The contention on behalf of the Revenue is therefore fundamentally misconceived and rejected out of hand.

9. The transactions in issue in the present appeal are identical to issues presented in the appeal preferred by M/s **GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi** (supra) and substantially analogous to the facts that were considered in **Paul Merchants Ltd. vs. CCE, Chandigarh** (supra). On application of these precedents, the impugned order passed by the learned Commissioner, New Delhi dated 25/05/2010 cannot be sustained. It is therefore quashed. There shall however be no order as to costs.

(Dictated and pronounced in open court)

(Justice G. Raghuram)
President

(Rakesh Kumar)
Member (Technical)

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