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REGISTERED / AD

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

Dated: **03/06/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52344/2014-CU[DB]** dated **15/05/2014**

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
I	ST/127/2009	**BHARAT SEATS LTD.** PLOT NO. 1, MARUTI UDYOG JOINT VENTURE COMPLEX, GURGAON-1122015, HARYANA.
		Name and Address of Respondent
I	ST/127/2009	**C.S.T. DELHI** 17-B, I.P. Estate, IAEA House, New Delhi.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

V. Laxmikumaran
5, Jangpura Extension,
Link Road,
New Delhi-110014

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 AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH NEW DELHI, COURT NO. 1

Date of Hearing/Decision: 15.05.2014

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. 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 should 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 Departmental authorities?	

Appeal No.ST/127of 2009-CU(DB)

[Arising out of Order-in-Appeal No.60/ST/DLH/2008 dated 20.11.2008 passed by the Commissioner of Central Excise (Appeals), New Delhi].

M/s.Bharat Seats Ltd. — Appellant

Vs.

CCE, Delhi-I — Respondent

Appearance:

Rep. by Shri Narendra Kumar Singhvi, Advocate for the appellant.
Rep. by Shri Govind Dixit, DR for the respondent.

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

Final Order No. 52344/2014 /dated:15.05.2014

Rakesh Kumar:

In this case, the appellant are alleged to have received taxable service of Consulting Engineers during the period from 1.6.2003 to 31.3.2005 from an offshore service provider, M/s.Houwa Kogyo Co. Ltd., Japan, in respect of which, the service tax amounting to Rs.1,52,949/- is sought to be recovered under Rule 2 (1)(d)(iv) of Service Tax Rules, 1944 along with interest thereon under Section 75 of the Finance Act, 1994. It is on this basis that the service tax demand of the above amount was confirmed along with interest and penalties were imposed under Section 76, 77 and 78 of the Act by the jurisdictional Asstt. Commissioner vide order-in-original dated 26.10.2007. On appeal being filed to the Commissioner (Appeals) against this order, the same was upheld vide order-in-appeal dated 20.11.2008 against which this appeal has been filed.

2. Heard both the sides.

3. Shri N.K. Singhvi, Advocate, ld. Counsel for the appellant, pleaded that in this case the service tax is sought to be demanded from the Appellant as service recipient in respect of the taxable services of the Consulting Engineers alleged to have been received during the period 1.6.2003 to 31.3.2005 from M/s.Houwa Kogyo Co. Ltd., Japan , an offshore service provider, that the specific provision for recovery of service tax from the recipient in India in respect of a taxable service provided by an offshore service provider was made by inserting Section 66A of the Finance Act, 1994 w.e.f. 18.04.2006, that the Hon'ble Bombay High Court in the case of **Indian National Ship Owners Association Ltd. reported in 2009 (13) STT 235 (Bombay)** had held that since Section 66A was inserted in Finance Act, 1994 w.e.f. 18.4.2006, for the period prior to 18.4.2006, service tax could not be recovered from the service recipient in India in respect of the taxable service provided by the offshore service provider and that in view of this, the impugned order is not sustainable.

4. Shri Govind Dixit, ld. Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and emphasized that even during the period prior to 18.4.2006, Rule 2 (1)(d)(iv) of the Service Tax Rules, 1994 was there, which provided for recovery of the service tax in respect of the import of taxable service into India from the service recipient and that in view of this, there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records.

6. We find that the issue involved in this case stands decided by the Hon'ble Bombay High Court in the case of **Indian National Ship Owners Association Ltd. (supra)**, wherein after considering the provisions of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 Hon'ble Bombay High Court held that in absence of the specific provisions in the Finance Act, 1994 during the period prior to 18.4.2006, for recovery of the service tax, from the service recipient in India, in case of the services provided by a service provider abroad, no service tax could be recovered from the service recipient. In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

[operative part already pronounced]

(Justice G. Raghuram)
President

(Rakesh Kumar)
Member (Technical)

Ckp.