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: **31/12/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/54798-54799/2014-CU[DB]** dated **19/12/2014**

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 & Respondent
1	ST/377/2009	**C.C.E, JAIPUR-I** N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.
2	ST/439/2009	**m/s rajsthan textiles mills,** pachpahar road,bhawanimandi, distt. jhalawar
		Name and Address of Respondent
3		RAJASTHAN TEXTILE MILLS PACH PAHAR ROAD, BHAWANIMANDI, DISTT. JHALWARA (RAJ.),,
4		**C.C.E, JAIPUR-I** N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Shri Jitin Singhal, Advocate

6 Additional Party's Name & Address :
7 Bar Association, CESTAT, Delhi
8 Director Publications, Customs, Excise. I.P. Estate, Delhi
9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No. 377 & 439 of 2009 -

[Arising out of Order-In-Appeal No. 19/DK/ST/JPR-I /2009 dated 5.3.2009 passed by Commissioner of Customs & Central Excise (Appeals) Jaipur I]

For approval and signature:
Hon'ble Mr Ashok Jindal, Member (Judicial)
Hon'ble Mr. R K Singh, 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?	

Commissioner of Central Excise
Jaipur — Appellants

Vs.

M/s. Rajasthan Textiles Mills — Respondent

AND

M/s. Rajasthan Textiles Mills — Appellants

Vs.

Commissioner of Central Excise
Jaipur — Respondent

Appearance:

Mrs. Suchitra Sharma, DR for the Appellants
Shri Jitin Singhal, Advocate for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Mr. R K Singh, Member (Technical)

Date of Hearing /decision: 19.12.2014

FINAL ORDER NO. A/54798-54799/2014-Cu(Br)

Per Ashok Jindal :

Both the Revenue as well as assessee are in appeal before us against the impugned order.

2. Brief facts of the case are that assessee is manufacture of cotton yarn and manmade staple fiber yarn and exporting the same. The assessee is receiving services of agent located outside India for selling of their product and paying commission overseas thereon. During the period December, 2005 to October, 2006, Revenue issued a show cause notice to demand service tax on the commission paid to the service provider located outside India under the category of Business Auxiliary services under reverse charge mechanism. Therefore, impugned proceedings were initiated and the

adjudicating authority confirmed the demand of Service Tax for whole of the period.

3. On appeal before the learned Commissioner (Appeals), the learned Commissioner relying on the decision of Indian National Shipowners Association vs. Union of India [2009 (13) STR 235 (Bom)] which was affirmed by the Apex Court in [2010 (17) STR J 57 (SC)] gave the benefit of commission paid prior to 18.4.2006 and for the period 18.4.06 to October 2006, he confirmed the demand of Service Tax.

4. Revenue is in appeal against the impugned order for dropping the demand for the period prior to 18.4.06 and assessee is in appeal against the impugned order for confirming the demand for the period 18.4.06 to October, 2006 on the premises that services have been received by the appellant prior to 18.4.06. Only the invoices have been raised by the service provider post 18.4.06. Therefore, services which have been received prior to 18.4.06, are not liable to pay service tax.

5. Heard the parties and considered the submissions.

6. As the issue is settled by the decision of Indian National Shipowner Association (supra) that in such a case, for the

period prior to 18.4.06, the assessee is not liable to pay service tax. In these circumstances, appeal filed by the Revenue deserves no merits. Hence, dismissed.

7. We further find that contention of the assessee is that for the period post 18.4.06 to October, 2006, the services have been received by the assessee prior to 18.4.06 this fact has to be examined by the adjudicating authority. Therefore, we set aside the impugned order for the said period and remand it back to the adjudicating authority with the direction that if services have been received by the assessee prior to 18.4.06, although the services invoices have been received post 18.4.06, the assessee is not required to pay service tax on the commission paid to the service provider located outside India. If the services has been received post 18.4.06, then the assessee is required to pay service tax along with interest and the penalty as per law. The assessee is directed to produce the evidence in support of their contention within 7 days of the receipt of this order before

adjudicating authority, failing which the adjudicating authority shall be at liberty to recover the dues pending against the assessee.

8. Appeal is disposed of by way of remand.

(Dictated and pronounced in the open court)

22/12/14

(Ashok Jindal)
Member(Judicial)

(R K Singh)
Member(Judicial)

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