

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

Appeal No. ST/103 /2006-104 /2006

Date 30/01/2008

Assistant Registrar  
C.E.S.T.A.T, New Delhi

To :  
THE COMMISSIONER OF SERVICE TAX, FARIDABAD  
3RD FLOOR, C WING, NEW CGO COMPLEX, NH IV,  
FARIDABAD  
121001

THE COMMISSIONER OF SERVICE TAX, FARIDABAD

Appellant

Vs  
Respondent

M/S G E C AVERY LTD

I am directed to transmit herewith a certified copy of Final order No. ST/16-17/08 Customs dated 10/1/08  
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar  
(Customs Appeal Branch)

**Copy to :**

1. Respondent

M/S G E C AVERY LTD  
FOUNDRY LANE SMETHWIK, WEST MIDLANDS B66  
2L, UNITED KINGDOM

2. Adv. / Consult

MR.J.K.MITTAL &CO  
A-15, THIRD FLOOR FLAT NO 3A, PRIYADARSHINIVIHAR DELHI

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Customs Appeal Branch)

1 THE COMMISSIONER OF CENTRAL EXCISE FARIDABAD  
3RD FLOOR, C-WING, NEW CGO COMPLEX, NH IV, FARIDABAD

**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. II**

**Service Tax Appeal Nos. 103-104 of 2006**

[Arising out of the Order-in-Appeal No. 186-187/ST/DLH/  
2005 dated 17/01/2006 passed by The Commissioner  
(Appeals), Central Excise, Delhi – I.]

For Approval and signature :

**Hon'ble Shri S.S. Kang, Vice President**

**Hon'ble Dr. T.V. Sairam, 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?
- 

CST, Faridabad

Appellant

Versus

M/s G.E.C. Avery Ltd. ]

Respondent

M/s Avery India Limited ]

**Appearance**

Shri A.P.S. Suri, Authorized Representative (Jt. CDR) – for  
the appellant.

Shri J.K. Mittal, Advocate – for the Respondent.

CORAM : Hon'ble Shri S.S. Kang, Vice President  
Hon'ble Dr. T.V. Sairam, Member (Technical)

DATE OF HEARING : 10/01/2008.

Final Order No. ST/16-17/08 Dated : 10/1/08

Per. S.S. Kang :-

Heard both sides. Revenue filed these appeals against the impugned order passed by the Commissioner (Appeals). The Commissioner (Appeals) in the impugned order held that the agreement in question is in respect of transfer of Intellectual property service and is not for providing service as consulting engineer. The Commissioner (Appeals) relied upon the Board Circular F. No. B 2/8/2004-TRU dated 10.11.2004 and various decisions of the Tribunal.

2. The contention of revenue is that the present agreement is in respect of the service of consulting engineer received by respondent. The revenue relied upon the terms of the agreement dated 18<sup>th</sup> March 1999 in respect of technical assistance, the contention is that as per the agreement there

were provisions for providing technical assistance service, therefore, the service under the agreement is the service as Consulting Engineer. The revenue relied upon the decision of the Tribunal in the case of **Indian Farmers Fertilizer Co-op. Ltd. vs. CCE Bareilly (U.P.)** reported in **2007 (5) S.T.R. 281 (Tri. – Del.)**.

3. The contention of respondent is that the agreement in question is regarding transfer of technical information by way of transfer of Intellectual property service and it cannot be said that the agreement is for receiving technical assistance. The contention is that as per the payment clause, the licensee has to pay to licensor a sum of British Ponds 2,50,000. The contention is that the clause of agreement regarding technical assistance was optional. The technical assistance is to be provided on the request of the respondent and in the present case, the respondent have not received any technical assistance and there is no evidence on record to show that any payment was made in respect of technical assistance received by the respondents. The payment were made in respect of the license fee for transfer of intellectual property.

4. We have gone through the terms and conditions of the agreement dated 18<sup>th</sup> March 1999, no doubt, there is a clause for technical assistance, but it is optional. It is on the request of the present respondent. There is no evidence on record to show that present respondent has asked for any technical assistance or paid for it. We have gone through the decisions of Indian Farmers Fertilizer Co-op. Ltd. (Supra), we find that in this case, the Tribunal held that in the case of Composite Contract Agreement in respect of know-how all the payments accept those which are specifically related with license and which did not any form of technical assistance, including thereunder will have to be separated, no tax would be chargeable in respect of such licensing fee attributable to the rights convert under the agreement. The Service Tax will be chargeable only in respect of technical assistance which was contemplated under the agreement for being rendered at the plant. We have gone through the Board Circular dated 10/09/2004, as per the Board Circular, the transfer of Intellectual Property rights does not amount to rendering any service. In the present case, we find that there is no evidence

on record to show that appellant had paid for technical assistance, as per the agreement, the same is optional and as the asking for the respondent. In absence of such evidence, we find no merit in the contention of the revenue. The appeal is dismissed.

(Dictated and pronounced in open court)

**(S.S. Kang)**  
**Vice President**

**(Dr. T.V. Sairam)**  
**Member (Technical)**

PK