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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

Appeal No. ST/223 /2007-224 /2007 - CU[DB] Date 24/10/2008

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

To :
M/S SAMCOR GLASS LTD.
KOTA BARAN ROAD, VILLAGE NAYA NOHRA,
BARAN ROAD, KOTA (RAJ.) 324001

M/S SAMCOR GLASS LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/298-99/08 **CU[DB]** dated 13.10.08 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
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R
4. J.C.D.R.
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8. Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. Nidheshak publications. I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagarava Road. T. Nagar.Chennai
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

M/S SAMCOR GLASS LTD.
KOTA BARAN ROAD, VILLAGE NAYA NOHRA, BARAN ROAD, KOTA (RAJ.) 324001

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

Service Tax Appeal No. 223-224 of 2007-Cus.

(Arising out of Order-in-Appeal No. 7 & 6 (GRM) ST/JPR-1/2007 dated 29.1.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE 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 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 Departmental authorities.	

M/s Samcor Glass Ltd. — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance:
Shri Nupur Mishra, Advocate - For appellant
Shri A.K. Madan, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 13.10.2008

Final Order No. 57/298-299/08 dated 13/10/08

Per S.S. Kang:

Common issue in involved in these appeals, therefore, are being taken up together.

2. The period in dispute in both the appeals is 16.8.2002 to 31.3.2003 and from February 2003 to September 2003, the demand is confirmed on the ground that the appellants received consulting engineering service from outside India. Admitted facts of the case are that the provider of service has not registered office in India. The appellant relied upon the Larger Bench decision of the Tribunal in the case of **Hindustan Zinc Ltd. Vs. CCE** reported in 2008 (87) RLT 317 and the Revenue relied upon the decision of Hon'ble Kerala High Court in the case of **CCE Vs. Kerala State Electricity Board** reported in 2006 (3) STR 625.

3. We find that the Larger Bench of the Tribunal in the case of **Hindustan Zinc. Ltd.** (supra) held that taxable service provided by a non-resident or is from outside India, who does not have any office in India, having been specified as taxable service with effect from 1.1.2005, under Notification No. 36/2004, recipient of such service could not be held liable for paying Service Tax prior to 1.1.2005.

4. Further, the Tribunal in the case of **M/s JCB India Ltd. Vs. CST** vide Final Order No. ST/208/08 dated 6.8.08 after taking into consideration the decision of Kerala High

relied upon by Revenue

Court, held as under :-

> "We have perused the judgments of the Kerala High Court and the Supreme Court. It is true that in the question of law framed by the High Court, reference was made to the period both prior to 16.8.2002 and subsequent, but on perusal entire judgment it is clear that the sum and substance of the dispute was the liability of the service recipient. The point canvassed was whether in view of the specific terms of the agreement the service recipient was liable to pay service tax or not. The point was answered against the service recipient. With due respect, we are not able to appreciate as to how tax liability which is creature of statute and governed by statutory provisions can be determined or apportioned on the basis of terms of the agreement between two private parties. Be that as it may, the point for consideration in the Supreme Court was whether the service recipient was also liable to pay interest on the service tax. There is nothing in the judgment to suggest that the question as to whether service recipient was liable to pay service tax prior to 1.1.2005, was gone into.
>
> We are satisfied that this appeal is squarely covered by the decision of the Larger Bench (supra). We accordingly, set aside the impugned order of the

Commissioner (Appeals) and allow the appeal with consequential relief, if any."

5. In view of the decision, the impugned orders are set aside and appeals are allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM