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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/443 /2006 - CU[DB]   Date 06/11/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO 19,SECTOR 17-C,CHANDIGARH.

C.C.E. CHANDIGARH   Appellant

Vs

M/S RAINBOW DENIM LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/326/08 **CU[DB]** dated 23.10.08 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
   M/S RAINBOW DENIM LTD
   VILL-CHAUNDHERI,P.O.DAPPAR,DISTT-MOHALI.
2. Adv. / Consult

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), Thyagaraya 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-15
15 Office Copy
16 Guard file

Assistant Registrar

(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/443/06

[Arising out of Order-in-Appeal No.546/CE/CHD/06 dt.15.6.06 passed by the Commissioner of Central Excise, Chandigarh)

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 Department Authorities: :

CCE, Chandigarh — Appellant

Versus

M/s. Rainbow Denim Ltd. — Respondent

Appearance

Ms. L.B.Yadav, Authorised Departmental Representative(DR) For appellant
Shri Atul Gupta, CS for respondent

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 23.10.08
Order No. S/326/08

Per S.S.Kang:

Heard both sides. The revenue filed this appeal against the impugned order passed by the Commissioner(Appeals) whereby Commissioner(Appeals) held that the service tax is not leviable in the present case as the service was not provided inside India.

2. The contention of the revenue is that the respondent is receiving the service of foreign based commission agents in respect of goods being exported and that amount of sales commission was duly admitted in the books of accounts. The contention of the revenue is that as the respondents are receiving the taxable service providing by non residents who does not have any office in India, therefore, respondent being recipient of that taxable service is liable to pay service w.e.f. 1.1.05. The revenue relied upon the Larger Bench decision of the Tribunal in the case of Hindustan Zinc Ltd. vs CCE reported in 2008(11)STR.338.

4. The contention of the respondent is that the service was never provided in India, therefore, findings of Commissioner(Appeals) are correct as the service provider never visit in India, therefore, respondents are not liable for service tax.

5. We find that the respondents are paying commission to foreign based commission agents in respect of goods being exported. The foreign based commission agent is booking order on behalf of the appellant and goods were supplied from India. We find ratio of the Hindustan Zinc Ltd. is fully applicable on the facts of the case, the Tribunal held that taxable

service provided by non-resident from outside India who does not have any office in India, having been specified as taxable service w.e.f. 1.1.05 and recipient of such service could not be held liable for paying service tax prior to 1.1.05. In the present case, the period of dispute is 9.7.04 to 31.3.05. In these circumstances, we find that the matter requires for reconsideration. The impugned order is set aside and the matter is remanded back to Commissioner(Appeals)to decide afresh after affording an opportunity of hearing to the appellant. The appeals is disposed of by way of remand.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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