TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. ST/166 /2008-167 /2008 - CU[DB] Date 27/11/2008
ST/138-139/2006

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

To :
M/S CEEKAY DAIKIN LTD.

9, UDYOG KENDRA IND. AREA, GREATER NOIDA,
DISTT. GB NAGAR (UP)

M/S CEEKAY DAIKIN LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/356-359 2008 CU[DB] dated 20.11.08

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. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
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)

M/S EXEDY CORPORATION
C/O APPELLANT

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

SERVICE TAX APPEAL NO. 138-139 OF 2006 AND 166-167 OF 2008

[Arising out of Order-in-Appeal No. 46-47-CE/APPL/NOIDA/2006 dated 21.2.2006 & 130-CE/APPL/NOIDA/06 dated 30.11.2007 both passed by the Commissioner (Appeals), Central Excise, Noida]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Ceekay Daikin Ltd.,
M/s. Exedy Corporation — Appellants

Vs.

CC, NOIDA — Respondent

Appearance:

Shri P.K. Singh, Advocate for the appellant;
Shri L.B. Yadav, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of Hearing: 20th November, 2008

FINAL ORDER NO. ST/356 to 359/08 **dated** 20/11/08

Per P.K. DAS:

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that Appellant No. 1 is engaged in the manufacture of excisable goods for automobile industry. Appellant No. 2 is a foreign based company situated at Japan. Both the appellants entered into agreement dated 9.6.99 for providing technical know-how by the Appellant No. 2 to Appellant No. 1. Show cause notice dated 17.9.2003 was issued to both the Appellants proposing demand of service tax of Rs. 7,65,450/- for the period from 1999-2000 to 2002-2003 under the category of "Consulting Engineers". By order dated 31.3.2005, the Dy. Commissioner of Central Excise confirmed the demand of tax jointly and ~~normally~~ severally on both the Appellants and imposed penalties on both the appellants. The Commissioner (Appeals) by Order-in-Appeal

dated 21.2.2006 allowed the appeals of Appellants by way of remand to adjudicating authority for reconsideration of the case after following principle of natural justice and for passing a speaking order. Appellants challenged Order-in-Appeal dated 21.2.2006 before the Tribunal, being Appeal No. 138-139 of 2006, which are being taken up for hearing for disposal.

3. During the pendency of the above appeals before the Tribunal, the adjudicating authority passed de novo adjudication order dated 26.12.2006 and confirmed the demand of tax and penalties as earlier adjudication order. The Commissioner (Appeals) by Order-in-Appeal dated 26.11.2007 upheld the Adjudication Order and rejected the appeals of Appellants. Hence, Appellants filed appeal No. 166-167 of 2008, which are also taken up today for disposal.

4. After hearing both the sides and on perusal of the record we find from the agreement that the Appellants No. 2, a foreign company was providing the information and technical know-how to the Appellant No.1. It is contended by the learned Advocate that such activities are not coming within the purview of 'Consulting Engineer'. It may come under "Intellectual property service" as introduced on 10.9.2004 for transferring the use or enjoyment of any intellectual property right. He further submits that the Tribunal in various decisions held that recipient of the service of foreign company are not liable to service tax prior to 1.1.2005.

Learned Advocate further submits that the demand of service tax on both the appellants are not sustainable.

5. We find that there is a factual dispute on the nature of service, which were not examined by the adjudicating authority. Learned Advocate made various submissions on this issue. Therefore, the impugned orders are set aside and the matters are remanded back to the adjudicating authority to decide afresh after considering the submissions of the appellants. Needless to say that the adjudicating authority shall give proper opportunity of hearing to the appellants before passing any order. All the appeals are allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK