

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

Appeal No. ST/216 /2007 - CU[DB]

Date 27/11/2008

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

To :
M/S BHARAT ALUMINIUM CO. LTD.
BALCO NAGAR, KORBA, CHHATTISGARH.
M/S BHARAT ALUMINIUM CO. LTD.

Appellant

Vs
Respondent

C.C.E. RAIPUR

2008 CU[DB] dated 19.11.08

I am directed to transmit herewith a certified copy of **Final order No. ST/360**
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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

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 Publications (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), Thvagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, 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 AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

Service Tax Appeal No. 216 of 2007

[Arising out of Order-in-Appeal No. 01/RPR-I/2007 dated 23.1.2007 passed by Commissioner (Appeals) Central Excise, Raipur, Chhattisgarh]

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 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?

M/s. Bharat Aluminium Co. Ltd.

Appellant

Vs.

Commissioner of Central Excise
Raipur

Respondent

Appearance:

Ms. Tejswani, Advocate for the Appellant
Mr. L.B. Yadav, DR for the Respondent

CORAM:

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

Date of Hearing/Decision: 19.11.2008

Final ORDER NO. 57/360/08

Per P.K. Das (for the Bench):

Heard both sides. Perused the records.

2. The appellant received engineering consultancy from the foreign companies. Service tax was demanded for the payments made by the appellant to the foreign companies, who provided consultancy services. The period of dispute is 2001 to 31.3.03. It was proposed demand of Service Tax under Rule 2 (1)(d)(iv) of the Service Tax Rules. The Commissioner (Appeals) observed that in view of Rule 2(1)(d)(iv) inserted on 16.8.2002, the appellant cannot be held liable to pay service tax prior to 16.8.2002 as the service receiver cannot be made liable to service tax on behalf of a person who is not-resident or is from outside India does not have any office in India. The learned advocate placed reliance on Larger Bench decision of the Tribunal in M/s. Hindustan Zinc Ltd. vs. CCE, Jaipur [2008 (TIOL) 1149 CESTAT (Delhi-LB)]. The relevant portion of the said decision is reproduced below:

“16. In fairness to the learned SDR we must mention that a rather detailed argument was made on the rules of interpretation; he also cited decisions to support his contention (so did the learned Advocate for the appellant); in view of the clear legal position, as it appears to us and stated hereinabove, we have not considered it necessary to deal with them.

17. The upshot of the above discussion is that the taxable service provided by a non-resident or 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 notwithstanding the amendment in rule 2(1)(d) of the Service Tax Rules under notification no. 12/2004.

18. We thus concur in the view expressed in the cases of Aditya Cement and Ispat Industries, supra. The issue is thus answered in favour of the assessee and it is held that as a recipient of the 'consulting engineer' service from outside India, the appellant was not liable to pay service tax prior to 1.1.2005."

3. Respectfully following the decision of the Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd. (supra), we find that the impugned order is not sustainable. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)