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/140 /2006-141 /2006 - CU[DB]   Date 03/12/2008

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

To :
THE COMMISSIONER OF CUSTOMS & CENTRAL
EXCISE, INDO
P.B.NO.10, MANIK BAGH PLACE, INDORE (M.P)

THE COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, INDO   Appellant

Vs

M/S ARKEMA CATALYST INDIA LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/396-97/08 **CU[DB]** dated 26.11.08 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
   M/S ARKEMA CATALYST INDIA LTD
   BIRLAGRAM, NAGDA
2. Adv. / Consult : V.Lakshmikumaran, Adv
   B-6/10 Safdarjung Enclave
   New Delhi
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-15
15. Office Copy
16. Guard file
17. THE COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, INDO
    P.B.NO.10, MANIK BAGH PALACE, INDORE (M.P)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:26.11.2008

Service Tax Appeal Nos.140-141 of 2006

Arising out of the order in appeal No.71-72-CE/IND/APPL-II/2005 dated 20.5.2005 passed by the Commissioner (Appeals II), Customs, Central Excise, Indore.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	YN).
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant		Respondent
C.C.& C.E., Indore	vs.	M/s Arkema Catalyst India Ltd.

Appearance:

Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue and Shri R. Ravi, Advocate for the respondent

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

Final Order No. ST/396-397/08

Per P.K. Das:

Both the appeals arise out of a common order in appeal passed by the Commissioner (Appeals) and therefore, both are being taken up together for disposal.

2. Heard both sides and perused record.

3. In the instant case, the respondents are engaged in the manufacture of Aluminium Chloride classifiable under Chapter 28 of the Schedule to Central Excise Tariff Act, 1985. The respondents entered into agreement with M/s ELF Atochem, France a~~greement~~ for providing technical know-how and paid the amount to the foreign company during the period 26.9.01 to 31.12.2002. The adjudicating authority confirmed the demand of tax on the amount paid by the appellant to the foreign company and imposed penalty. Commissioner (Appeals) set aside the Adjudication Order.

4. We find that the issue involved in this case is the liability of recipient of taxable service provided by non-resident or is from outside India and does not have any office in India. The issue has been settled by the Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd. vs. C.C.E., Jaipur - 2008 (11) STR 338 (Tri-LB).The relevant portions of the said decision are reproduced below:

> *"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 form 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."*

5. In view of the above decision, the appellant is recipient of service provided by a non-resident or from outside India, who does not have any office in India, not liable to pay service tax prior to 1.1.2005. Hence,

the demand of tax and penalty are not sustainable. We do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, both the appeals filed by Revenue are rejected.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/