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/115 & 217/2007 - CU[DB] Date 18/12/2008

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

To :
M/S MALWA COTTON SPINNING MILLS LTD.
VILLAGE PATLION, THE PAONTA SAHIB, DISTT.-
SIRMOUR (H.P.)
173025

M/S MALWA COTTON SPINNING MILLS LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/427-428 2008 CU[DB]** dated 5/12/08 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. CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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. Office Copy
16. Guard file

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:5.12.2008

Service Tax Appeal Nos.217 & 115 of 2007

Arising out of the order in appeal No.1076/CE/CHD/06 dated 24.11.06 passed by the Commissioner Customs & Central Excise (Appeals), Chandigarh.

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?	No
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.E. Chandigarh	vs.	M/s Malwa Cotton Spinning Mills Ltd.

Appellant		Respondent
M/s Malwa Cotton Spinning Mills Ltd.	vs.	C.C.E., Chandigarh

Appearance:

Shri L.B. Yadav, Authorized Departmental Representative (DR) for the Revenue and Shri Hemant Bajaj, Advocate for the assessee

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

Final Order No. S7/427-408/08

Per P.K. Das:

Both the appeals are arising out of a common order in appeal and therefore, both are being taken up together for disposal.

2. After hearing both sides and on perusal of the record, we find that the assessee paid sales commission to foreign ~~brand~~ based company in respect of goods exported by them. The issue involved in this case is the liability of payment of tax on the assessee, paid against service provided by non-resident or from outside India and not having any office in India. Commissioner (Appeals) held that liability to pay service tax will be on the service provider only with effect from 1.1.05 onwards and confirmed demand of tax from 1.1.2005 to 31.12.2005. Revenue filed appeal for setting aside the demand prior to 1.1.2005. The assessee filed the appeal for the demand of tax from 1.1.2005 to 31.12.2005. We find that the issue is no more res integra in view of the decision of the Tribunal in the case of Foster Wheeler Energy Ltd. vs. C.C. Ex. & Cus. , Vadodara II – 2007 (7) STR 443 (Tri-Ahmd.).

3. The relevant portions of the said decision is reproduced below:

> ***"6.8 We also noticed that there has been an amendment by way of inserting Section 66A in the Service Tax Provisions by the Finance Act, 2006 w.e.f. 18-4-2006. There is no doubt that the services rendered are ultimately in relation to setting up of the LNG terminal in India. Nevertheless, no reliable evidence has been adduced to contradict the claim of the appellant that the services claimed by them as offshore services are not offshore services. Such offshore services are liable for tax consequent to the amendment w.e.f. 18-4-2006, but for earlier period the same will not be so.***
>
> ***6.9 Service Tax Circular No. 36/4/01 dt. 8-10-2001 holds that service provided beyond the territorial waters will not attract service tax. This circular will be relevant till the amendment brought out in service tax laws by insertion of Section 66A w.e.f. 18-4-2006. Therefore, the appellant's contention that the demand on services relating to identified offshore services***

cannot be subjected to service tax during the relevant/period is acceptable."

4. We have also noticed that the Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd. – 2008 (11) STR 338 (Tri-LB) held that service recipient of the Consultant Engineer provided from outside India became liable to pay service tax not prior to 1.1.2005 in view of amendment of Service Tax Rules. The Tribunal in the case of Foster Wheeler Energy Ltd. (supra) held that in view of insertion of 66A of the Finance Act, 1994 with effect from 18.4.06 and the Board Circular the offshore services provided are not taxable prior to 18th April, 2006.

5. In view of the Larger Bench decision in the case of Hindustan Zinc Ltd. (supra), we do not find any merit in the appeal of the Revenue. The appeal filed by Revenue is rejected.

6. In view of the decision of the Tribunal in the case of Foster Wheeler Energy Ltd. supra, we find that demand of tax from 1.1.2005 to 31.12.2005 is not sustainable. Accordingly, Commissioner's (Appeals) order in so far as demand of tax from 1.1.2005 to 31.12.2005 is set aside. The appeal filed by the assessee is allowed with consequential relief.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/