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

Appeal No. ST/734 -735 /2007 –SM[BR]WITH/CO/ 57- 58 /2008-SM[BR] Date 31/03/2008

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S JINDAL STEEL & POWER LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 513-514/2008 –SM[BR]** dated **7.3.2008**

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
1-2) M/S JINDAL STEEL & POWER LTD.
POST BOX NO. 16, KHARSIA ROAD, RAIGARH, C.G.
2. Adv. / Consult SHRI. MS. REENA KHAIR, SHRI. ABHISEK JAJU ADV
R-163, SECOND FLOOR, GREATER KAILASH PART-I
NEW DELHI-110048

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 734-735 of 2007 –SM (BR) with CO/57-58/08

(Arising out of Order-in-Appeal No. 78-79(ST)/RPR-I/2007 dated 10.9.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

1.	**Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?**	No
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?**	Yes
4.	**Whether order is to be circulated to the Departmental authorities.**	No

CCE, Raipur — Appellant

Vs.

M/s Jindal Steel & Power Ltd. — Respondent

Appearance:
Shri V.K. Agarwal. DR - For appellant
Shri Reena Khair, Shri Abhishek Jaju, Advocate - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 7.3.2008

Final Order No. 513-514/08-SM(BR) dated 7.3.08

Per S.S. Kang:

Common issue involved in these appeals, therefore, are being taken up together.

2. The Appeal No. ST/734/07 is filed by the Revenue whereby the demand in respect of Service Tax was dropped on the ground that the service of commission agent who is outside India was availed prior to 18.4.06. The second Appeal No. 735/2007 is also filed by the Revenue against the order-in-appeal passed by the Commissioner (Appeals) whereby consequential refund has been allowed.

3. The main contention of the Revenue is that the service of Foreign Based Commission Agent rendered prior to 18.4.2006 is taxable under category of 'business auxiliary services' which includes commission agent. The Revenue relied upon Rule 2(1)(d)(iv) of Service Tax Rules which provides that in relation to any taxable service provided by a person who is non-resident or is from outside India, does not have any funds in India, the person receiving taxable service in India is liable for paying Service Tax.

4. I find that this issue is now settled by the Tribunal in the case of **Foster Wheeler Energy Ltd. Vs. CCE** reported in 2007 (7) STR 443 against the Revenue. The Tribunal held that the service provided by service provider which has no office in India becomes taxable with effect from 18.4.2006 with insertion of Section 66 of the Finance Act with effect from 18.4.06. In view of the above decision, I find no infirmity in the impugned order whereby demand is set aside and consequential relief has been allowed. The appeals are dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM