

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/39 /2008-SM[BR]

Date 01/04/2008

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

To :
C.S.T. DELHI

17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI

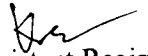
Appellant

Vs

Respondent

M/S CANI MERCHANDISING PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 533 /2008 –SM[BR]** dated 26.3.2008
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

M/S CANI MERCHANDISING PVT. LTD.

36/75, PUNJABI BAGH[W], NEW DELHI

2. Adv. / Consult SHRI SAMEER KAPPR, C.A.

C/O RESPONDENTS-----

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 Publications (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,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – II

SERVICE TAX APPEAL No. 39 OF 2008-SM

[Arising out of Order-in-Appeal No. 37/ST/DLH/20/07 dated 15.10.2007 passed by the Commissioner (Appeals), Central Excise, New Delhi]

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?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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?	Yes

CST, New Delhi

Appellant

Vs.

M/s. Cani Merchandising Pvt. Ltd.

Respondents

Appearance:

Shri B.S. Suhag, JDR for the Revenue,
Shri Sameer Kapoor, C.A. for the respondents

Coram:

Hon'ble Mr. S.S. Kang, Vice President,

Date of Hearing: 24th March, 2008

FINAL ORDER NO. 533/08 sm(BP) dated 26.3.08

Per S.S. Kang:

Heard both sides.

2. Revenue filed this appeal against the impugned order whereby rebate in respect of claim in respect of export of service under Rule 3 of Export of Service Rules, 2005 was allowed.

3. Brief facts of the case are that the respondents are registered with the Service Tax authorities as provider of business auxiliary services. The respondents filed a rebate claim in respect of service tax paid on the ground that the service was delivered outside India, therefore, service is to be treated as export of service. The adjudicating authority rejected the claim and the Commissioner (Appeals) in the impugned order held that the respondents are liable for service tax as service provider, however, they are entitled for rebate under Rule 5 of Export of Service Rules, 2005.

4. Case of the Revenue is that the respondents are situated in India and they are booking orders on behalf of the foreign supplier for supply of goods in India. The Revenue relied upon the terms and conditions of agreement entered between the respondents and the foreign supplier which is termed as Distributor Agreement. As per agreement the respondents are distributors of products of foreign

supplier and they are receiving commission in respect of orders procured by them. Contention of the Revenue is that the appellants are provider of auxiliary services and this service cannot be treated as export of service as provided under Export of Service Rules, 2005. Revenue's contention is that as per scope of export of service such service is delivered outside India and used outside India and payment received in convertible foreign exchange. In the present case service is not provided outside India and used outside India. Contention of the respondents is that they are booking orders on behalf of the foreign supplier for supply of goods and the goods are supplied on behalf of the foreign supplier. The contention is also that this aspect is not gone into by the Commissioner (Appeals) or by adjudicating authority.

5. In this case the respondents claimed the rebate as provided under rule 5 of Export of Service Rules, 2005. Rule 5 of Rules provides that where any taxable service is provided, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. During the relevant period provisions of rule 3(2)a of the Export of Service Rules, 2005 provides that any taxable service specified in sub-

rule (1) shall be treated as export of service when the following conditions are satisfied, namely:-

- (a) such service is delivered outside India and used outside India;
and
- (b)

Contention of Revenue is that service is provided in India by booking of orders for the foreign supplier for supply of goods in India. Therefore, such service is not delivered outside India and also not used outside India.

6. I find that this aspect has not been considered either by the adjudicating authority or the Commissioner (Appeals). Therefore, matter requires re-consideration by the adjudicating authority. Accordingly, impugned order is set aside and the matter is remanded to the adjudicating authority for de novo adjudication and to decide after affording reasonable opportunity of hearing to the respondents.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 26th March, 2008

RK