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

Appeal No. ST/314 /2007-315 /2007,335 /2007-336 /2007 - CU[DB] Date 13/01/2009

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

To :
M/S SECURE METERS LTD.,
UNIT -I,.HARIPUR ROAD, BATED, BAROTIWALA,
DISTT. SOLAN (HP)
M/S SECURE METERS LTD., Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/20.23/09 CU[DB] dated 19.12.09

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
 C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
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 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
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

17. M/S SECURE METERS LTD. UNIT - I
 HARIPUR ROAD, BATED, BAROTIWALA, DISTT. SOLAN (H.P.)

PTO

18. M/S SECURE METERS LTD. UNIT - II
HARIPUR ROAD, BATED, BAROTIWALA, DISTT. SOLAN (H.P.)

19. M/S SECURE METERS LTD.
UNIT -II, HARIPUR ROAD, BATED, BAROTIWALA, DISTT.
SOLAN (HP)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Service Tax Misc. Application No. 673-674 of 2008 in Appeal No. 314-315, 335-36 of 2007

[Arising out of the Order-in-Appeal No. 55-56/CE/CHD/2007 dated 20/03/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Mr. P.K. Das, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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 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?	:
4.	Whether order is to be circulated to the Department Authorities?	: Yes

M/s Secure Meters Limited, Unit – I & II Appellant

Versus

CCE, Chandigarh Respondent

Vice-Versa

Appearance

Ms. Nupur Maheswari, Advocate – for the appellant.

Shri S. Kumar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri P.K. Das, Member (Judicial)**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 19/12/2008.

Final Order No. 57/20-23/09 Dated : ___________

Per. P.K. Das :-

Common issue involved in these appeals and therefore all are being taken up together for disposal. The assessee filed Misc. applications for extension of stay orders. As the appeals are taken up for hearing. Misc. applications are dismissed as infructuous.

2. Heard both sides and perused the records.

3. The issue involved in these appeals is as to whether service tax is ~~variable~~ payable on the amount paid by the assessee as royalty to M/s Entity Metering Systems Ltd., England, a foreign based company, who had no office at India. The period relates to March 2002 to February 2004. Adjudicating Authority confirmed the demand of tax and imposed penalty. Commissioner (Appeals) reduced the penalties. Assessee filed appeals against the demand of tax and penalty. Revenue filed appeals against reduction of penalties by the Commissioner (Appeals).

4. We find that the issue has already been decided by the Larger Bench of the Tribunal in the case of **Hindustan Zinc Limited vs. CCE, Jaipur** reported in **2008 – TIOL – 1149 – CESTAT – DEL (LB).** It has been held that taxable service rendered 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. The relevant portion of the Larger Bench decision is reproduced below :-

> "16. In fairness to the learned S.D.R. 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.

19. The reference having been answered, the appeal may be listed before the Division Bench for final disposal according to law."

5. In view of the Larger Bench decision of the Tribunal in the case of M/s Hindustan Zinc Ltd. (supra), we find that demand of tax and penalties are not sustainable. Accordingly, the impugned orders are set aside. Appeals filed by the Assessee are allowed with consequential relief. Appeals filed by the Revenue are rejected.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK