

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

Appeal No. ST/479 /2007,593 /2007-596 /2007,630 /2007-632 /2007 - CU[DB]

Date 22/01/2009

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

To :
M/S PASUPATI SPINNING & WEAVING MILLS LTD.
1501, NIRMAL TOWER, 26, BARAKHAMBHA ROAD,
NEW DELHI 110001.
M/S PASUPATI SPINNING & WEAVING MILLS LTD.

Appellant

Vs

Respondent

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of **Final order No. ST/34-41/09**

CU[DB] dated 15.01.09

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.J.K.MITTAL &CO

A-15,THIRD FLOOR FLAT NO 3A,PRIYADARSHINIVIHAR 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 Publications (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

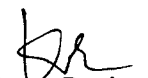
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai

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 MALWA COTTON SPINNING MILLS LTD
(100% EOU) RAIKOT ROAD, BARNALA(PB)

PTO

18. M/S MALWA COTTON SPINNING MILLS LTD
(100% EOU), RAIKOT ROAD, BARNALA(PB)

19. M/S VMT SPINNING COMPANY LTD.(100 PERCENT EOU)
VILLAGE- KALYANPUR, P.O.- BADDI, TEHSIL- NALAGRH,
DISTT- SOLAN, HP

20. M/S ARISHT SPINNING MILLS
SAI ROAD, BADDI.

21. M/S ARISHT SPINNING MILLS(DTA)
SAI ROAD, BADDI.(HP)

22. M/S VSGM(100 PERCENT EOU)
SAI ROAD, P.O BADDI,DISTT- SOLAN, HIMACHAL PRADESH.

23. Sh. Hemant Bajan
A-05 Basement Leipat Nagar - II
New Delhi - 24

24. M/s DSK Legal
C-5/9 SDA opp IIT Gate
New Delhi -

**IN THE CUSTOMS, EXCISE & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – III

**SERVICE TAX APPEAL Nos. 479, 593 to 596
and 630-632 OF 2007**

[Arising out of Order-in-Appeal No. 267-273/CE/CHD/07 dated 23.07.2007, 204/CE/LDH/2007 dated 31.07.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

Hon'ble Mr. P.K. Das, Member (Judicial)

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?	✓
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	✓-h

M/s. Pashupati Spg. & Wvg. Mills Ltd.,

M/s. VMT Spg. Co. Ltd.,

M/s. Arisht Spg. Mills,

M/s. VSGM,

M/s. Malwa Cotton Spg. Mills

Appellants

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri J.K. Mittal, Shri Sunil Upadhyaya, Shri Rupendra Singh,
& Shri Hemand Bajaj, Advocates for the appellants,
Shri A.K. Madan & Shri Sunil Kumar, SDRs, for the Revenue,

Coram:

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

Date of Hearing: 15th January, 2009

FINAL ORDER NO. 57/34-41/09 **dated** _____

Per P.K. Das:

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

2. Heard both sides and perused the records.
3. The appellants are engaged in the manufacture of yarn and exported the same. The appellants paid commission to the foreign based commission agent for procuring the orders who have no office in India. Service Tax was demanded on the payment made to the commission agent. The period of dispute is July, 2004 to 15.6.2005.
4. The Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd. vs. CCE, Jaipur, reported in 2008 (11) STR 338 (Tri.-LB) has held 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. In the case of M/s. Anant Spg. Mills vs. CCE, Bhopal, reported in 2008-TIOL-2143-CESTAT-DEL the Tribunal has held that in view of the insertion of Section 66A in Finance Act, 1994, offshore

services cannot be subjected to service tax prior to 18.4.2006. The Tribunal while passing the order in the case of Anant Spg. Mills (supra) considered the Board Circular on this issue. The relevant portion 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.

7. As we find that the issues in the present appeal are squarely covered by the decision in the case of Foster Wheeler Engergy Ltd. cited supra, following the same, we allow the appeal with consequential relief.

Inasmuch as we are allowing the appeal on merit, we are not going into the issue of limitation.”

5. Learned Advocate submits that the Hon’ble Bombay High Court in the case of Indian National Shipowners Association vs. UOI, reported in 2008-TIOL-633-HC-MUM-ST has held that levy of service tax on a person who is resident in India but who receives services outside India prior to insertion of Section 66A of the Finance Act, 1994 is not sustainable. The relevant portion of the said decision is reproduced below:-

“20. It appears that a similar provision in the rules was made applicable by the Government in relation to the Clearing Agents by making customers of the Clearing Agent liable for levy of the Service tax. That question has been decided by the Supreme Court by its judgment in the case of Laghu Udyog Bharati (supra) and the Supreme Court has clearly laid down that the imposition of the service tax is on the persons rendering the services and by making a provision in the Rules, levy of tax cannot be shifted to the recipients of the services and the Rule framed which brought about this situation has been declared by the Supreme Court to be invalid. The law laid down by the Supreme Court in its judgment in Laghu Udyog (supra) is squarely applicable to Rule 2(1)(d)(iv), which is relied on in this case. It appears that it is first time when the Act was amended and Section 66A was inserted by Finance Act, 2006 w.e.f. 18.4.2006, the Respondents got legal authority to levy service tax on the recipients of the taxable service. Now, because of the enactment of Section 66A, a person who is resident in India or business in India becomes liable to be levied service tax when he receives service outside India from a person who is non-resident or is from outside India. Before enactment of Section 66A it is apparent that there was no

authority vested by law in the Respondents to levy service tax on a person who is resident in India, but who receives services outside India. In that case till Section 66-A was enacted a person liable was the one who rendered the services. In other words, it is only after enactment of Section 66-A that taxable services received from abroad by a person belonging to India re taxed in the hands of the Indian residents. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. Before enactment of Section 66-A, there was no such provision in the Act and therefore, the Respondent had no authority to levy service tax on the members of the Petitioners-association.

21. In the result, therefore, the petition succeeds and is allowed. Respondents are restrained from levying service tax form the members of the Petitioner-association from the period from 1.3.2002 till 17.04.2006, in relation to the services received by the vessels and ships of the members of the Petitioners-association outside India, from persons who are non-residents of India and are from outside India.”

6. Learned SDR placed reliance on the decision of the Tribunal in the case of Unitech Limited vs. CST, Delhi, reported in 2008 (88) RLT 953 (CESTAT-Del.). He submits that after considering the Larger Bench decision of the Tribunal in the case of Hindustan Zinc Ltd. it has been held that service provided from abroad by a foreigner or non-resident, not having any office or business establishment in India would not be liable to pay service tax prior to 1.1.2005.

7. After hearing both the sides we find that the issue has already been decided by the Tribunal in the case of Hindusant Zinc Ltd. (supra) for the period prior to 1.1.2005. The Tribunal in the case of Anant Spg. Mills (supra) has held that tax is leviable upon insertion of Section 66A of in

the Finance Act w.e.f. 18.4.2006. It is seen that the Tribunal while passing the order in the case of Anand Spg. Mills (supra) considered the Board's circular which was not placed before the Bench in the case of Unitech Ltd. (supra) We find the Hon'ble Bombay High Court in Indian National Shipowners Association (supra) has also held that tax is leviable after insertion of Section 66A in the Act.

8. In view of that we find no force in the submission of the learned D.R. Respectfully following the decision of the Hon'ble Bombay High Court in the case of Indian National Shipowners Association (supra) and the decision of the Tribunal in the case of Anant Spinning Mills (supra), we set aside the impugned orders. All the appeals are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

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