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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/518 /2006 - CU[DB] Date 23/01/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH Appellant
Vs
M/S RAINBOW DENIM LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/51/09 **CU[DB]** dated 21.01.09 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
   M/S RAINBOW DENIM LTD
   VILL-CHAUNDHERI, P.O. DAPPAR, DISTT-MOHALI.
2. Adv. / Consult : Sh. Bipin Garg, Adv
   B-1/1289A Vasant Kunj, New 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 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

SERVICE TAX APPEAL NO. 518 OF 2006

[Arising out of Order-in-Appeal No. 667/CE/CHD/06 dated 31.7.2006 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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Chandigarh — Appellant

Vs.

M/s. Rainbow Denim Ltd., — Respondent

Appearance:

Shri Vijay Kumar, Departmental Representative, for the Revenue,
Shri V.S. Misra, Advocate for the respondent

Coram:

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

Date of Hearing: 21st January, 2009

FINAL ORDER NO. S7/51/09 **dated** ________

Per P.K. Das:

The appellants filed this appeal against the order-in-appeal No. 667/CE/CHD/06 dated 31st July, 2006.

2. Heard both sides and perused the records.

3. The relevant facts, in brief, are that the respondents paid consultancy fee for technical services to M/s. Wonderful Chemicals Industries Ltd., Hongkong in May, 2004 who do not have any office in India and a foreign based company. We find that the issue involved in this case has already been settled by the decision of the Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd. vs. CCE, Jaipur, reported in 2008 (11) S.T.R. 338 (Tri.-LB). The relevant portion of the said decision is reproduced below:-

"16. In fairness to be 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 e could not be held liable for paying service tax prior to 1-1-2005 notwithstanding the amendment in Rule 2(1) 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."

4.In view of the decision of the Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd. (supra) we do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK