TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. ST/162 /2007 - CU[DB] Date 23/01/2009

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

To :
C.C.E, INDORE

MANIK BAGH PALACEE, POST BOX, NO. 10,
INDORE-452001

C.C.E, INDORE Appellant

Vs

RANBAXY LAB SERVICES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/52/09 **CU[DB]** dated 16.01.09

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
   RANBAXY LAB SERVICES
   SHOP NO.3, JAGNNATH CHAMBER PARAV, GWALIOR (M.P.)
2. Adv. / Consult : V.LAXMIKUMARAN, ADV
   B-6/10 SAFDARJUNG ENCLAVE
   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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:16.1.2009

Service Tax Appeal No.162 of 2007

Arising out of the order in appeal No.IND-I/378/2006 dated 26.12.2006 passed by the Commissioner (Appeals)-I, Customs & Central Excise, Indore.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NA
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant	Respondent
Customs & Central Excise, Indore vs.	M/s Ranbaxy Lab Services

Appearance:

Shri A.K. Madan, Authorized Departmental Representative (Jt.CDR) for the Revenue and Shri Harish Bindumadhvan, Advocate for the respondent

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

(Final) Order No. 57/52/09

Per P.K. Das:

Heard both sides and perused record.

2. Revenue filed this appeal against the order in appeal No. IND-I/378/2006 dated 26.12.2006 passed by the Commissioner (Appeals), Indore.

3. The respondents are engaged in the collection of pathological samples from the patient for testing by M/s Speciality Ranbaxy Ltd., Mumbai. It is a mere collection centre appointed by Speciality Ranbaxy

Ltd. Service tax was demanded under the category of 'Business Auxiliary Service'.

4. On perusal of the order of the Commissioner (Appeals), we find that the Commissioner (Appeals) passed the order following the decision of the Tribunal in the case of Dr. Lal Path Lab Pvt. Ltd. vs. C.C.E., Ludhiana - 2006 (4) STR 527 (Tri-Del.), which has been upheld by the Hon'ble Punjab & Haryana High Court as reported in 2007 (8) STR 337 (P & H).

5. Learned DR reiterates the grounds of appeal. He submits that in the instant case, the respondents spend 10% commission for market development, which is clearly a promotion or marketing service covered under sub-clause (i) and (ii) of the definition of Business Auxiliary Service. He also submits that it appears from the order of the Tribunal in the case of Dr. Lal Path Lab (supra) that this fact was not before the Bench.

6. After hearing both sides, we reproduce the relevant portion of the order of the Commissioner (Appeals):-

> ***"4. The appeal is being taken up for final disposal after dispensing with pre-deposit of duty and penalty amounts. On a careful consideration of the written submissions made by the appellants. I find the dispute in the present appeal relates to demand of service tax in relation to collection of pathological samples and receiving payments through an agreement from SRL, Mumbai. According to the department, the collection of samples and sending the same to SRL, Mumbai as per the contract entered with them would come within the purview of Business Auxiliary Service. Hence the Adjudicating Authority confirmed the demand of service tax on the appellants. The appellants have , however, strongly contended that what they deducted was actually their margin amount which was called as 'discount' for easy reference. Further, the whole dealing was based on principal to principal basis on sub-contract basis and that they are not an agent of SRL, Mumbai and the development of market related for their own benefit and hence they would not fall under the category Business Auxiliary Services. In***

> ***support of their argument, they have also relied upon Tribunal's Final Order No.289-292/06-ST dated 30.8.06 in the case of Dr. Lal Path Lab., Ludhiana & others in which it was held that collection centres engaged in collection of samples and forwarding the same to the concerned laboratories for testing would not come within the purview of Business Auxiliary Services. One of the collection centres covered by the order dated 30.8.06 was acting as a collection centre for M/a SRL, Mumbai and therefore, the order of the Tribunal would be squarely applicable to the present case also."***

On perusal of the order of the Commissioner (Appeals), it is seen that the commission related to 10% is for development of market related to the respondent own benefit. We find that on the same issue, the respondents were also party in the case of Dr. Lal Path Lab. Pvt. Ltd. (supra) which is upheld by the Hon'ble Punjab & Haryan High Court.

7. In view of that, we do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/