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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

Date 17/02/2009

Appeal No. ST/17 /2007 - CU[DB]

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

To :
M/S ALSTOM PROJECTS INDIA LTD.

PROJECT OFFICE : CHANDIWALA ESTATE, MAA ANAND MAI MARG, KALKAJI, NEW DELHI 110019.
M/S ALSTOM PROJECTS INDIA LTD. — Appellant

Vs

C.S.T.DELHI — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/86/09 CU[DB] dated 17.2.09 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.S.T.DELHI
   IAEA HOUSE, 17-B, I.P. ESTATE, M.G. MARG, NEW DELHI 110002
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-
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-CUSTOMS

ST/17/07 CUST-BR

[Arising out of Order-in-Original No. 38/RK/06 dated 12.10.2006 passed by the Commissioner, Service Tax, Delhi].

Date of Hearing: 23.10.08
Date of Decision: 17.2.09

For approval and signature:

Hon'ble SHRI S.S.KANG, VICE PRESIDENT
Hon'ble SHRI 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 should 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?	

M/s. Alstom Projects (I) Ltd. ...Appellant
[Represented by Shri Ravi Raghavan, Advocate]

Vs.

CST, Delhi. ... Respondent
[Represented by Shri A.K. Madaan]

Coram: Hon'ble SHRI S.S.KANG, VICE PRESIDENT
Hon'ble SHRI RAKESH KUMAR, MEMBER(TECHNICAL)

Final ORDER NO. 57/86/09 DATED:__________

PER: RAKESH KUMAR

This is an appeal against Order in Original No.38/RK/06 dated 12.10.2006 passed by the

Commissioner, Service Tax, Delhi by which the Commissioner holding that the appellant, during the period of dispute i.e. from October 2004 to March, 2005, had received taxable "Intellectual Property Service", as defined under section 65(55b) read with section 65 (55a) of the Finance Act 1994 and taxable under section 65 (105) (zzr) of the Act, from an Offshore Foreign Service Provider M/s.Alstom Holdings Treasury, Paris, France, has–

(a) confirmed the service tax demand of Rs.49,20,480/- alongwith interest on it at the applicable rate for the period from October 2004 to March, 2005 against the appellant and has ordered appropriation of the amount of Rs.49,20,480/- plus Rs.1,66,490/- paid by the Appellant prior to the issue of the SCN, towards the above mentioned demand of service tax and interest; and

(b) Imposed penalty of Rs.100/- per day under section 76 of the Act ibid from the date on which the service tax was due till the date of its payment, penalty of Rs. 49,20,480/- under section 78 of the Act and penalty of Rs.1,000/- under section 77 of the Act.

1.1 As mentioned above, the appellant have paid the entire amount of service tax and the interest chargeable thereon prior to the issue of the show-cause-notice and in this appeal only the imposition of penalties under section 76, 77 & 78 of the Finance Act have been challenged.

2. Heard both sides.

2.1 Shri Ravi Raghavan, Advocate, the learned Counsel for the appellant, pleaded that during the period of dispute, on account of conflicting decisions on the question of liability of the service receiver in India for payment of service tax in respect of the taxable service received from an Offshore Service Provider, the appellant had reasonable doubt as to whether they were liable for payment of service tax or not, that it is only recently, the Larger Bench of the Tribunal in the case of M/s.Hindustan Zinc Ltd. Vs. CCE reported in 2008 TIOL 1149 LB has held that the service receiver in India receiving taxable service from an Offshore Service Provider not having any office or establishment in India, would be liable to pay the service tax w.e.f. 1.1.05, the date on which the Government issued the Notification under section 68 (2) of the Finance Act notifying the taxable services received from an Offshore Service Provider by the service receiver in India, as the services in respect of which it is the service receiver in India who would be liable to pay the service tax, that it is not under dispute that as soon as the department pointed out, the appellant discharged entire service tax liability alongwith interest even before the issue of the Show-Cause-Notice, that in view of these circumstances, the provisions of sub-section 3 of section 73, which had come into effect w.e.f. 10.9.04 would become applicable and in view of this no show-cause-notice should have been issued and that in view of the above, no penalty should have been imposed on the appellant.

2.2. Shri A.K. Madaan, ld. DR defending the impugned order pleaded that since the service tax for the period from October 2004 to March, 2005 was not paid by the due date, the penal provisions of section 76 would automatically be attracted, that the provisions of sub-section (3) of section 73 are not attracted to this case, as this case involves suppression of facts on the part of the appellant, that the appellant were aware of the service tax liability but still they did not discharge the same, that in view of these circumstances, there is no case for invoking section 80 or section 73(3) of the Finance Act 1994 and, therefore, there is no merit in this appeal praying for setting aside the order of penalties imposed on the appellant under section 76, 77 & 78 of the Act.

3. We have carefully considered the submissions from both the sides and perused the records. The IPR Service, as defined under section 65 (55b) read with section 65 (55a) of the Finance Act 1994 became taxable under clause (zzr) in section 65 (105) of the Finance Act 1994 effective from 10.9.04. There is no dispute about the fact that the appellant having manufacturing Units at GIDC, Makarpura, Maneja Vadodara and at Pollachi Road Coimbatore and having their Corporate Office at Chandiwala Estate, Maa Anand Mai Marg, Kalkaji New Delhi, had received the taxable IPR Service from an Offshore company M/s. Alstom Holdings Project, Paris, which does not have any office or business establishment in India. The appellant have not disputed their service tax liability and have paid the entire amount alongwith interest on 8.10.05 i.e. even before the issue of show cause notice. The point of dispute is as to whether in these circumstances the appellant were liable for penalty under section 76, 77 & 78 of the Act. We find merit in the appellant's argument that during the period of dispute there was confusion in the industry regarding the liability for payment of service tax, when the taxable service is received by a person in India from an Offshore Service provider not having any office or establishment in India.

This matter was finally resolved only recently by a Larger Bench Judgement of the Tribunal in the case of Hindustan Zinc Ltd. (supra) wherein it was held that the service tax liability could be fastened on a service receiver in India in respect of taxable service received by him from an Offshore Service Provider not having any office or establishment in India only w.e.f. 1.1.2005. Tribunal in case of Bhoruka Aluminium Ltd. Vs. CCE 2008 (11) STR 163 (Tri-Bang.), has held that when during period prior to 18.4.06 there was bonafide doubt regarding service rendered by foreign agent abroad for procuring orders for export being subject to levy of Service Tax in the hands of service recipient in India and when the Service tax for the period from 9.7.2004 to 31.3.06 was paid even prior to issue of SCN dated 9.10.06, the provisions of section 73(3) would be applicable and therefore, there was no necessity to even issue the Show Cause Notice and since the Show Cause Notice had been issued, there is reasonable cause for not imposing the penalty u/s. 78 of the Act.

4. In view of the above, we are of the view that the provisions of section 80 of the Act are applicable to the facts of this case and therefore, no penalty should have

been imposed on the appellant. Moreover, when the Appellant have discharged tax liability from October 2004 to March, 2005 period alongwith interest, while in view of Tribunal's Judgement in case of M/s. Hindustan Zinc Ltd. (Supra), they were liable to pay the tax only w.e.f. 1.1.05, it would be illogical to impose penalties on them u/s. 76, 77 & 78. In view of these circumstances, we hold that the Commissioner's order imposing penalty on the appellant under section 76, 77 & 78 of the Act is not sustainable and the same is set aside. The appeal is allowed.

[Pronounced in open Court on 17/2/09]

(S.S.KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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